

(24,680)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 936.

JOSIE C. BAKER, INDIVIDUALLY AND AS ADMINISTRATRIX OF CHARLES BAKER, DECEASED, PLAINTIFF IN ERROR,

vs.

BAKER, ECCLES & COMPANY AND AUGUSTA H. BAKER, INDIVIDUALLY AND AS ADMINISTRATRIX OF CHARLES BAKER, DECEASED.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

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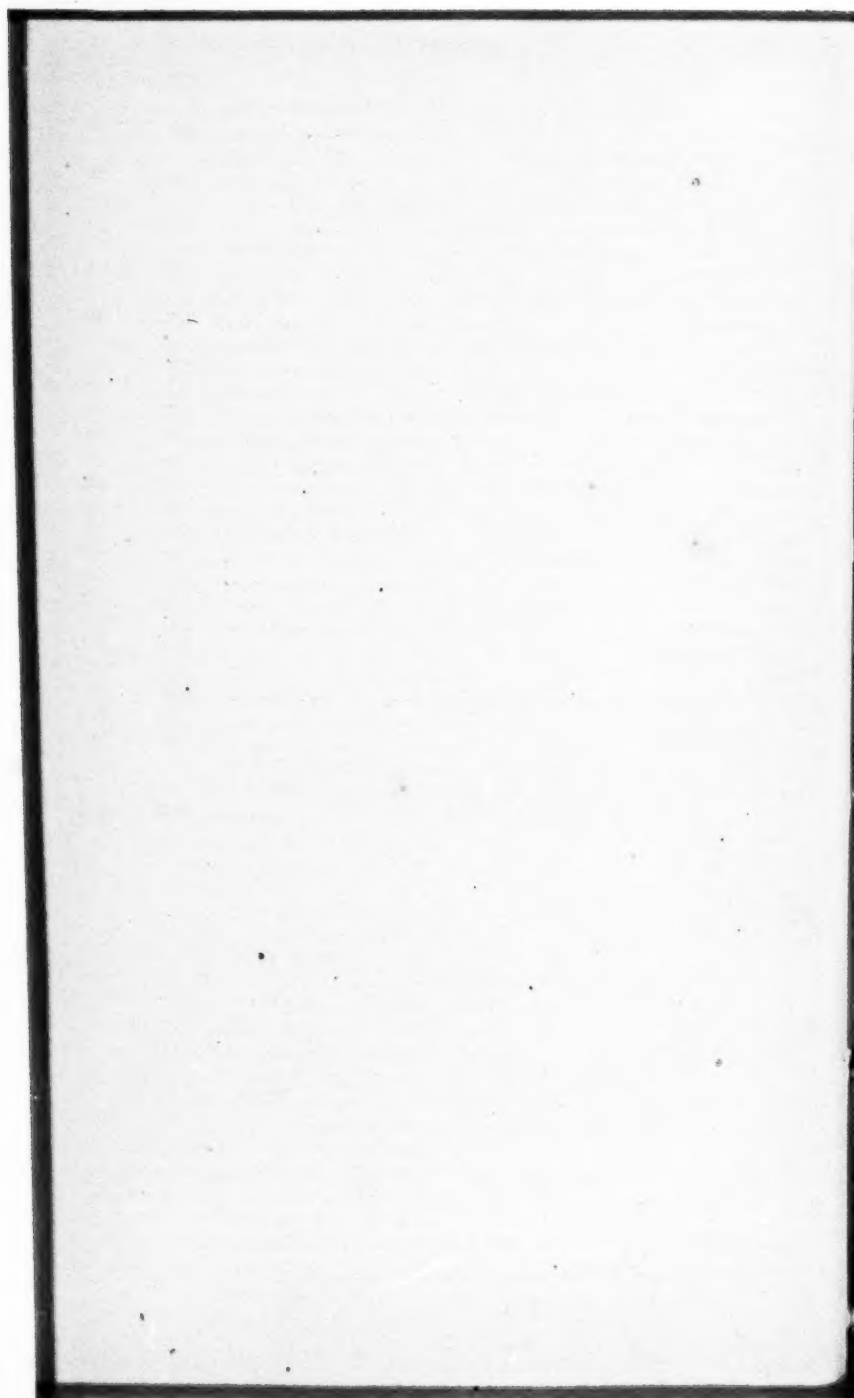
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a COMMONWEALTH OF KENTUCKY:

The Court of Appeals.

Pleas Before the Honorable the Court of Appeals of Kentucky, at the Capitol in Frankfort, on the 11th day of February, 1915.

Mrs. JOSIE C. BAKER, Individually and as Administratrix of Charles Baker, Deceased, Appellants,

v.

BAKER, ECCLES & COMPANY, AUGUSTA H. BAKER, Administratrix of Charles Baker, Deceased, in Kentucky, and Augusta H. Baker, Appellees.

Appeal from McCracken Circuit Court.

Be it remembered that on the 1st day of September 1914, the appellants above named filed in the office of the Clerk of the Court of Appeals of Kentucky a transcript of record in the case named, embracing the following pleadings and record as directed to be copied by the Præcipe filed in said Court on March 18, 1915, to-wit:

1 Pleas Before the Hon. W. M. Reed, Judge of the McCracken Circuit Court, at the Court House, in the City of Paducah, Ky., on the 27th Day of June, 1914.

JOSIE C. BAKER, Individually and as Administratrix of Charles Baker, Deceased, Plaintiff,

v.

BAKER, ECCLES AND COMPANY, Defendant.

Petition in Equity.

Be it remembered that heretofore, to-wit: on the 21st day of June, 1913, the plaintiff by her attorneys filed in the clerk's office of the above named Court her petition, which is in words and figures as follows, to-wit:

The plaintiff, Jessie C. Baker, personally and as administratrix of Charles Baker, deceased, respectfully states and shows:

That the plaintiff is and has been all her life a citizen of the State of Tennessee, and resides at Savannah in Hardin County in said State; and that defendant is a corporation created and organized under the laws of the State of Kentucky, and has its place of business at Paducah, in McCracken county in said State.

That plaintiff's husband, Charles Baker, died intestate on the 1st day of September, 1912, in said State of Tennessee, and while domiciled in said State, owning property both real and personal, located in said County of Hardin and State of Tennessee; and that

plaintiff was by the County Court of said County of Hardin and State of Tennessee, at its November Term, 1912, to-wit on the 25th day of November, 1912, duly appointed and qualified as the administratrix of her said husband Charles Baker, gave bond as such in the sum of \$70,000, and was qualified as such by taking the prescribed oath, and entered immediately upon the duties of said office.

That the said Charles Baker, deceased, left no children or issue surviving him, and that by the laws of the State of Tennessee, the plaintiff, his surviving widow, was and is his sole distributee, and entitled to all his personal estate after payment of debts.

That said Charles Baker died seized and possessed of certain real estate situated in Hardin County, Tennessee; and that on the 28th day of December 1912, plaintiff filed her bill in the Chancery Court at Savannah, Tennessee, a court of general jurisdiction, praying, among other things, to have dower assigned to her in the lands belonging to the estate of her husband, to impound and collect certain rents due to her husband's estate for the year 1912, and to have declared her rights as widow and sole distributee of her said husband. Said suit in the Chancery Court of Hardin County, Tennessee, was brought by the plaintiff Josie C. Baker individually and as administratrix of Charles Baker, against E. W. Baker, her husband's brother, and Mrs. Augusta H. Baker, her husband's mother, residents of Paducah, Kentucky, and J. W. Tackett, Jesse Barnes, Fayette Barnes, G. L. Barnes, administrator of C. R. Barnes, deceased, residents of said County of Hardin, State of Tennessee, and the First National Bank, a banking corporation chartered under the national banking laws of the United States, and doing business at Savannah, Tennessee. The said defendants E. W. Baker and

Augusta H. Baker were brought before said court by publication in the manner prescribed by the laws of said State of Tennessee, and the other defendants in said suit were duly served with process; and such proceedings were had in said cause that dower was assigned to the plaintiff in the lands belonging to her husband's estate, the rents impounded and collected, and the plaintiff Josie C. Baker's rights in her husband's estate and as his widow and sole distributee, were duly by said court declared. Plaintiff files herewith as an Exhibit to this petition and as part hereof, a full, complete and perfect transcript of the proceedings in said Chancery Court of Hardin county, Tennessee, embodying a full transcript of the proceedings in said County Court of Hardin County, Tennessee, duly certified in accordance with the Acts of Congress, and marked Exhibit "A".

That plaintiff's husband and intestate, the said Charles Baker, was at the time of his death the owner and holder of 270 shares of the capital stock, of the par value of \$100 each, of the defendant corporation, Baker, Eccles & Company; and said defendant corporation, Baker, Eccles & Company, was also indebted to her said husband and intestate at the time of his death, for accumulated dividends and profits accruing upon said stock, and which were in part credited to him on the books of the corporation and bearing interest, and

for moneys had and received, to the total amount, as plaintiff is informed, believes and charges, of \$11,429.17, all of which the said defendant promised and agreed to pay. The ownership of said capital stock was evidenced by seven certificates issued by said defendant corporation to and in the name of the said Charles Baker, as follows:

4	Certificate No.	11	for	50	shares	of	\$100	each,	\$5,000.
	"	12	"	50	"	"	"	"	\$5,000.
	"	13	"	50	"	"	"	"	\$5,000.
	"	14	"	50	"	"	"	"	\$5,000.
	"	15	"	30	"	"	"	"	\$3,000.
	"	19	"	10	"	"	"	"	\$1,000.
	"	21	"	30	"	"	"	"	\$3,000.

That all of said certificates were in the possession of her said husband at the time of his death, and were in the possession of the plaintiff at the time of her appointment and qualification as his administratrix, and were reported and returned by her in her inventory of the assets of her husband's estate made and submitted to the said County Court of Hardin County, Tennessee. The indebtedness of the defendant corporation to her said husband's estate was also reported and returned in her said inventory, but she was not able at that time to state fully and accurately the amount thereof.

That plaintiff made a settlement in said County Court of Hardin County, Tennessee, on the second day of December, 1912, showing the assets received and disbursements made by her, which said settlement was by said court on that day duly ratified and confirmed, and said County Court in its said decree ordered and adjudged that plaintiff, as the surviving widow and sole distributee of the said Charles Baker, was entitled in her own right to all of the surplus personal property of the estate of her said husband, and to receive and hold as her individual property all of the surplus personalty of the estate, after payment of debts and expenses of administration,

and ordered and directed that plaintiff as such administratrix of her husband, transfer to herself individually, as the widow and distributee of her said husband, all of said personalty, including the said 270 shares of the capital stock in defendant corporation, which plaintiff accordingly did, and now holds the said certificate of stock transferred by herself as administratrix as aforesaid to herself personally and individually; and she also personally executed a receipt to herself as administratrix acknowledging receipt of all other personal property of said estate remaining in her hands as administratrix, after payment of debts and expenses of said estate. Said settlement and decree thereon in the said County Court of Hardin County, Tennessee, will be found at pages 105-109 of Exhibit A heretofore referred to and filed herewith.

That in the said suit in the Chancery Court of Hardin County, Tennessee, it was also found and adjudged and decreed by said court, among other things, that the said Charles Baker was at the time of his death a citizen of the State of Tennessee and domiciled

at Savannah, in Hardin County said State; that he had been a citizen of and domiciled at Savannah, Tennessee, all his life, and that plaintiff as his widow was his sole distributee and entitled to all of the personal property of which he died the owner, after payment of his debts; and the said Chancery Court of Hardin County, Tennessee, specifically adjudged and decreed that the plaintiff herein, Josie Baker, was individually and personally entitled to the said 270 shares of stock in the defendant corporation, and to all accumulated profits and surplus due from said corporation thereon; that she was entitled to retain and hold the said certificates of stock, and to have issued to her by said corporation, the defendant herein, upon surrender of said certificates and her demand therefor, a new certificate or certificates in her own name individually, in lieu of said certificates issued to said Charles Baker, and that she was entitled to demand of and receive from said corporation the accumulated profits and surplus theretofore and thereafter accruing on said stock, and all other amounts due or owing by said corporation to the said Charles Baker. Said decree, dated the 2nd day of May, 1913, will be found at pages 112-119 of the transcript heretofore referred to as Exhibit A and filed herewith.

That under and in pursuance of said judgment and decree of the County Court of Hardin County, Tennessee, pronounced in December, 1912, as aforesaid, plaintiff made demand on defendant corporation, Baker, Eccles & Company, to transfer the said 270 shares of stock into the name of plaintiff individually; and also made demand on said defendant to pay to her the sums of money due and owing by said corporation to the estate of the said Charles Baker, deceased, both of which demands were by the said defendant corporation refused; and that, thereafter, and after the rendition of the said decree of the Chancery Court of Hardin County, Tennessee, on the 2nd day of May, 1913, as aforesaid, plaintiff again made demand of said defendant corporation that it transfer said 270 shares of stock to her personally and individually, and that it pay to her all sums of money due and owing by said corporation to the estate of the said Charles Baker, deceased, which demands were again refused by said defendant, and said defendant has not transferred any of said stock to plaintiff, nor paid to her any part of its indebtedness to the estate of her said husband Charles Baker, deceased; and all of said indebtedness, together with interest thereon, is still due and unpaid.

That the said County Court of Hardin County, Tennessee, had full jurisdiction of the personal estate of the said Charles Baker, deceased, and the administration and distribution thereof, under the laws of the State of Tennessee, and the proceedings therein, aforesaid, were regular and in accordance with laws of said State; that the said Chancery Court of Hardin County, Tennessee, is, and was at the date of the proceedings aforesaid therein, a superior court of general jurisdiction in said State, and had jurisdiction of both the subject matter, and of all the parties interested therein, in the suit aforesaid, and said proceedings were in all respects regular and according to the laws of said State.

That plaintiff is now, by virtue of the judgments and decrees of the said County and Chancery Courts of Hardin County, Tennessee, hereinbefore referred to, and under and by virtue of the statute laws of the State of Tennessee, the owner and holder of the certificates of stock for 270 shares in defendant corporation hereinbefore described, and is also the equitable and real owner of and entitled to collect in her own right, the aforesaid indebtedness of the defendant corporation, Baker, Eccles & Company, to the estate of her deceased husband the said Charles Baker, with interest and accumulations of profits thereon, and at all events she is entitled personally to collect and receive the same from herself as administratrix when

8 they shall have been collected by her in her representative capacity from the defendant; that she has not sold or disposed of any part of either said stock or indebtedness, and is now entitled in her own right to demand and receive both the transfer of said stock and the payment of said indebtedness to her.

That by the statute laws of the State of Tennessee, Shannon's Code, Sec. 4172, and sub-sections 1 and 2, it is provided as follows:

SEC. 4172. The personal estate as to which any person dies intestate, after the payment of the debts and charges against the estate, shall be distributed as follows:

(1) To the widow and children, or the descendants of children representing them equally, the widow taking a child's share.

(2) To the widow altogether, if there are no children nor the descendants of children."

Said statute was in force in said State at the date of the death of the said Charles Baker and at the date of the qualification of plaintiff as his administratrix, and is still in force.

That notwithstanding the judgments and decrees aforesaid of the County and Chancery Courts of Hardin County, Tennessee, and the demands made by plaintiff as aforesaid upon the defendant, she has not been able as administratrix of her said husband's estate to collect the sums due from the defendant corporation, and pay them over to plaintiff in her personal capacity, and therefore plaintiff joins in this bill as plaintiff in her capacity and as administratrix of the said Charles Baker, deceased, and makes bond in accordance with the provisions of section 3878 of the Kentucky Statutes.

Wherefore, plaintiff, in both her representative and individual capacities, prays that summons issue for the defendant corporation, Baker, Eccles & Company, requiring said defendant to appear and answer this petition; and that plaintiff, in her individual capacity, have judgment requiring said defendant, upon presentation and demand therefor and the surrender of said certificates by her, to make proper transfer of said 270 shares of stock to plaintiff Josie C. Bajer, individually; and plaintiff prays, both as administratrix and in her individual capacity, for judgment against the said defendant for the said sum of \$11,429.17, with interest thereon from the 1st day of September, 1912, and for any other sums that may be shown to be

due from said defendant to the estate of plaintiff's said husband; for the costs herein expended, and for all other, proper and equitable relief.

C. C. GRASSHAM,

Paducah, Ky.;

ROSS & ROSS,

Savannah, Tenn.;

PITTS & McCORMICK,

Nashville, Tenn.,

Attorneys for Plaintiff.

The affiant, Josie C. Baker, plaintiff, states that the allegations contained in the foregoing petition are, as she believes, true.

JOSIE C. BAKER.

Subscribed and sworn to before me by Josie C. Baker, this the 17th day of June, 1913. My commission as Notary Public will expire on the 11th day of July 1914.

[SEAL.]

A. J. WILLIAMS,

Notary Public.

* * * * *

15

Original Bill. Filed Dec. 28th, 1912.

The Bill of Complaint of Josie C. Baker, individually and as administratrix of Charles Baker, deceased, a resident of Savannah, Hardin County, Tennessee, Complainant, against E. W. Baker and Mrs. Augusta H. Baker, residents of Paducah, Kentucky; J. W. Tackett, Jesse Barnes, Fayette Barnes, and G. L. Barnes, administrator of C. R. Barnes, deceased, residents of Hardin County, Tennessee, and the First National Bank, a banking corporation chartered under the National Banking laws of the United States, and doing a banking business at Savannah, Tennessee, Defendants.

To the Honorable E. L. Bullock, Chancellor, Holding the Chancery Court at Savannah, Tennessee:

(1) Complainant respectfully states unto your Honor that her husband, Charles Baker, died intestate, in the State of Tennessee, on the first day of September, 1912, and that at the time of his death he was a citizen of said State and had his domicile at Savannah, Hardin County, in said State of Tennessee.

(2) Complainant was duly appointed by the County Court of said County of Hardin at its November term 1912, as the administrator of her said husband, gave bond as such in the sum of \$70,000.00 and was duly qualified by taking the oath prescribed by law, and entered upon the duties of said office.

16 (3) The said Charles Baker left surviving him complainant, as his widow and sole distributee; he left no children or descendants of children. As his only heir at law he left surviving

him his brother, defendant E. W. Baker. His mother, defendant Mrs. Augusta H. Baker, also survived him.

(4) That the said Charles Baker was the owner at the time of his death, of two hundred and seventy (270) shares, of the par value of \$100 each, of the capital stock of Baker, Eccles & Company, a corporation chartered and organized under the laws of the State of Kentucky and having its principal office and place of business at Paducah, Kentucky, said ownership of stock being represented by certificates No. 11, 12, 13 and 14, for 50 shares each, Certificates No. 15 and 21, for 30 shares each, and Certificate No. 19 for 10 shares, all of which certificates were duly issued and delivered to the said Charles Baker and in his name by said corporation, were owned by him and in his possession at the time of his death, and are now in complainant's possession; and that there had accumulated in said corporation a large amount of profits and surplus, apportionable to the stockholders, the share of which apportionable to the said stock of complainant's husband, being between \$7,000 and \$8,000 so that the said stock was, at his death, and is now, worth largely in excess of its par value.

(5) That the said Charles Baker was also the owner of and entitled to received, at the time of his death, one-half of the rents for the year 1912, accruing on certain farm lands in Hardin County, Tennessee, hereinafter described, but not due at his death, his half interest amounting to between \$800. and \$1,000, owing by
17 the tenants cultivating the lands and residing in said County of Hardin, as hereinafter more particularly shown; and he was also owner of some other personal property in said county of Hardin, of small amount and value.

(6) Complainant further states that the said Charles Baker died seized and possessed of an undivided one-half interest in certain tracts of land, (the lands from which the aforesaid rents accrued), situated in the 4th and 6th civil districts of Hardin County, Tennessee, on the Tennessee River, near the town of Savannah, and containing in the aggregate about 635 acres, and of the estimated aggregate value, for the whole, of about \$25,000.

Said lands situated in the 4th. civil district consist of Lots No. 2 and 3, in the division of the J. N. Baker lands, and one tract containing one hundred acres adjoining the same on the north. All of said lands form and are and have been for many years treated and considered as one body. Said lot No. 2 is composed of two tracts, and is bounded and described as follows; to-wit:—

One tract of Lot No. 2: Beginning at a stake, 2 hackberry and sycamore pointers on the bank of the Tennessee River, the same being the northwest and lower corner of Lot No. 1, in the division of said J. N. Baker lands; runs thence down the river with its meanders as follows, to-wit: N. 55 degrees E. 8½ poles N. 62 degrees E. 30 poles, N. 59 degrees E. 41 poles, N. 71 degrees E. 34 poles, N. 67 degrees E. 10½ poles to a stake, 2 hackberry and red elm pointers on the bank of the river; thence south 7 degrees east 133 poles to a stake in the center of Mud Creek, the same being the corner of said

lot No. 1 thence with the line of said lot No. 1 north 59 degrees west 146 poles to the beginning, containing 50 acres.

The other tract of Lot No. 2: Beginning at a stake in the center of Mud Creek with hackberry, ash and hornbeam pointers, the same being the lower corner, in the creek of said lot No. 1 runs thence east with the N. B. line of the same 847 poles to a stake on the west side of the Florence road in the east boundary line of the said tract, of which this is a part, with post oak and black oak pointers, the same being the N. E. Corner of said Lot No. 1; thence north with the E. B. line of the tract of which this is a part 17 $\frac{1}{5}$ poles to a post oak on the east side of the Florence road by the corner of Maxwell's field east of the road; thence west with Maxwell's S. B. Line 89 poles to a stake, Maxwell's S. W. Corner; thence North with his W. B. line 18 $\frac{4}{5}$ poles to a stake and sweet gum pointers in the same; thence west 726 poles to a stake in the center of Mud Creek with the hackberry and 2 maple pointers; thence up the center of the creek with its meanders as follows, to-wit: S. 24 degrees W. 14 poles, S. 47 $\frac{1}{2}$ degrees W. 16 $\frac{1}{2}$ poles, S. 24 degrees W. 14 poles to the beginning, containing 186 $\frac{3}{4}$ acres, and making the total number of acres in said lot No. 2 236 $\frac{3}{4}$ acres.

Lot No. 3 adjoining lot No. 2 on the north is bounded as follows: Beginning on the east side of the Tennessee River at the Southwest corner of a tract of land belonging to the heirs of Geo. F. Benton, and purchased by said Benton of D. A. Kerr, and being on the bank of said river; running thence South 38 poles to a stake; 19 thence East 422 poles, thence South 48 poles; thence west with the north boundary line of the tract known as Lot No. 2 in the division of said J. N. Baker lands 726 poles to a stake in the center of Mud Creek with hickory and 2 maple pointers, the same being the lower corner of said lot No. 2; thence up the creek with its meanders in the center as follows to-wit: S. 14 degrees W. 14 poles, S. 47 $\frac{1}{2}$ degrees W. 16 $\frac{3}{4}$ poles, S. 24 degrees W. 14 poles; S. 40 degrees W. 5 $\frac{1}{2}$ poles, S. 52 degrees W. 13 $\frac{1}{2}$ poles, S. 58 $\frac{1}{2}$ degrees W. 7 $\frac{1}{2}$ poles. S. 44 degrees W. 16 poles to a stake in the center of the creek, the same being the corner in the creek of that portion of said lot No. 2 that lies between the creek and the river; thence with the east boundary line of the same North 7 degrees W. 123 poles to a stake and hackberry and red elm pointers, the lower and north corner of the same on the bank of the river; thence down the river with its meanders to the beginning, containing 236 $\frac{3}{4}$ acres.

The 100 acre tract adjoining Lot No. 3 on the north is bounded as follows: Beginning on the southwest corner of the Benton land on the east bank of the Tennessee river; runs thence south 38 poles to a stake in the N. B. line of Baker land (being the N. B. line of the above described lot No. 3), runs thence east 428 poles to a stake; thence north 38 poles; thence West 428 poles to the beginning, making a total of about 573 $\frac{1}{4}$ acres in the 4th Civil District.

20 But there is excluded from the above described lands two small tracts containing respectively, 2 and 85/100 acres and 3 and 121/160 acres, out of the east end of the tracts, conveyed by

W. P. Barnhill and wife, the former owners, to Lewis Morris by deeds recorded in the Book "EE" pages 30 and 31.

Said lands which are situated in the 6th Civil District of said county consist of 2 tracts and are bounded and described as follows, to-wit:

One tract in the 6th District: Beginning on a black locust standing on the West bank of the Tennessee river with ironwood pointer; runs thence up the river with its meanders N. 64 degrees E. 47 1/3 poles to a stake with lynn and beech pointers; thence south 102 poles to a stake at the foot of a ridge with hackberry and persimmon pointers; thence west 45 2/3 poles to a stake in a pond with 2 Tupelo gum pointers; thence north 74 poles to the beginning containing 25 and 38/160 poles to the beginning, containing 25 and 38/160 acres.

The other tract in the 6th District: Beginning at a stake south of a pond in the field, and runs thence north 92 poles to a stake on the west bank of the Tennessee River with sweet gum and birch pointers; thence up the river with its meanders N. 61 degrees E. 47 4/5 poles to a stake with 2 large white oak pointers; thence south 17 degrees east 103 2/3 poles to a stake on top of a ridge with a black oak pointer on the south side of a pond; thence down the bottom running on the south side of the pond S. 68 degrees W. 20 poles, S. 82 degrees W. 22 poles, S. 74 degrees W. 32 poles to the beginning, containing 36 and 82 1/6 acres, making 61 3/4 acres in the 6th District.

The defendant E. W. Baker is the owner of the other one-half undivided interest in all of the above described lands.

Deed showing the ownership of these lands as alleged will be filed on or before the hearing.

Complainant charges that she, as the widow of the said Charles Baker, deceased, is entitled to dower out of her husband's interest in said lands, and that she has the right to have the same assigned to her by decree of this Honorable Court.

(7) Complainant further states that the defendant, Mrs. Augusta H. Baker, is setting up claim to a life estate in a part of the above described lands, but in just which tract or tracts, complainant is not definitely advised. She charges, however, that the said Mrs. Augusta H. Baker is not entitled to any interest in any of said lands, for life or otherwise, and especially that she is not entitled to any such interest as can defeat complainant's right to dower in any of said lands.

Complainant is informed, believes and charges, that the tracts above designated as tracts No. 2 and 3, of 236 2/3 acres each, belonged, with other lands, to the father of said Charles and E. W. Baker and husband of defendant Augusta H. Baker, in his life time; that he died very many years ago, after having made his last will and testament whereby he devised his lands to his widow, the said Augusta H. Baker, for life, with remainder to his daughter Annie S., and his two sons, the defendant E. W. Baker, and the said Charles Baker, complainant's husband and intestate; that after the death of her husband, and beginning nearly

forty years ago, the said Augusta H. Baker began conveying and releasing her life estate in said lands to the remaindermen—releasing to the said Annie S., then Annie S. Barnhill, an undivided one-third of said lands on April 7th, 1874, to the said E. W. Baker another one-third January 3, 1883, and to the said Charles Baker the remaining one-third October 18, 1883,—these conveyances and releases all being by deeds duly registered in the Register's Office of Hardin County, Tenn.; and complainant charges that since these several releases were made, the said Augusta H. Baker has neither claimed any interest in nor had possession of any of said lands.

After these releases of the life estate, the lands were divided into three equal or practically equal parts known and designated thereafter as Lots No. 1, No. 2 and No. 3. The one-third of E. W. Baker was conveyed by him to his brother-in-law, W. P. Barnhill, husband of his sister Annie S. in 1883; and the one-third, then owned by the said Charles Baker, being Lot No. 1,—was sold and conveyed by him to a third party, stranger to the family. Subsequently, the said W. P. Barnhill conveyed all his interest in said lots No. 2 and 3, and also the 100 acres adjoining and then owned by him, to his wife the said Annie S. by several deeds registered in 1897. And on

January 23rd, 1901, the said W. P. Barnhill and wife executed a deed conveying to defendant, Mrs. Augusta H.

23 Baker, a life estate in said Lot No. 2 "subject to the life estate of the said Annie S. Barnhill," this being the language of the deed as registered. This conveyance was voluntary and without consideration, and whether it was ever delivered or not complainant is not advised; but she charges that the said Mrs. Augusta H. Baker never accepted it nor claimed or asserted any rights under it, and that it was not really intended by any of the parties that she should do so.

The said W. P. Barnhill died sometime after 1901, leaving the said Annie S. his wife, the sole owner of the said lot No. 2, as well as of lot No. 3, and the 100-acre tract adjoining the latter on the North; and the said Annie S. Died in the early part of 1907, leaving a will, which was duly probated, whereby she bequeathed and devised all her estate, real and personal, to her younger brother, the said Charles Baker, husband and intestate of complainant. Thereupon on March 27th, 1907, the said Charles Baker, graciously and without solicitation or consideration, other than brotherly love, and affection, gave and conveyed to his brother, the defendant E. W. Baker, a one-half interest in the entire estate given by his sister; and it was in this way that said defendant E. W. Baker acquired his present one-half interest in said lots No. 2 and 3 and the 100 acres, lying in the 4th Civil District of Hardin County.

Complainant is informed and believes that defendant Mrs. Augusta H. Baker has, since the death of the said Charles Baker, set up claim to and now claims a life estate in said lot No. 2,
24 under and by virtue of said deed of Barnhill and wife to her, of January 23rd, 1901; and that defendant E. W. Baker is now claiming that by virtue of such life estate of his mother complainant is not entitled to dower in said Lot No. 2. This claim of

the said defendants, complainant believes and charges, is inspired entirely by defendant, E. W. Baker, and from his selfish motives, notwithstanding the very great liberality and kindness to him on the part of complainant's husband in graciously donating to him a full one-half interest in said Fourth District Lands.

Complainant charges that said defendants Augusta H. Baker has no life estate in any of said Fourth District lands, either in lot No. 2, or any other part thereof; that she never accepted said deed of 1901 nor any interest thereunder; that she never claimed or asserted any interest in or right to said Lot No. 2, or to the possession or control thereof, or to the rents arising therefrom; that complainant's husband, the said Charles Baker, was at the time of his death and had been since the beginning of the year 1907, as tenant in common with his said brother, in the actual, open notorious and adverse possession of said Lot No. 2 paying the taxes thereon and receiving to his own as his share of the rents and profits thereof, with the knowledge of the said Augusta H. and E. W. Baker; and she charges that the said Augusta H. Baker, and the said E. W. Baker are both estopped now to deny complainant's right of dower in said lot No. 2 and to set up and claim a life estate therein of the said Augusta H. Baker, and, moreover, that the said Augusta H. Baker has waived and abandoned, and is now barred from setting up such life estate by the statute of limitations of seven years.

25 So far as complainant knows or has information, the said defendants Augusta H. and E. W. Baker do not deny her right to dower in said lot No. 3 and the 100-acre tract adjoining, lying in the Fourth Civil District of Hardin County.

But as to said lands situated in the 6th Civil District, complainant is informed that defendant Augusta H. Baker, or the defendant E. W. Baker for her, is now claiming that she has a life estate also in the lands, and consequently that complainant is not entitled to dower therein. This claim, as complainant is informed, is based upon the fact that in the year 1898, nearly 15 years ago, in the deed of Mary F. Baird and others to the said E. W. and Charles Baker, the purchasers of said two tracts of land, they undertook to convey a life estate to the said Augusta H. Baker. Said deed does so provide, as it appears upon record. Complainant has no personal knowledge of the circumstances of said purchase and conveyance; but upon information believed to be true, she charges that the purchase was made by her husband and his brother, E. W. Baker, the vendees, with their own means; that the said Augusta H. Baker had no connection whatever with the transaction; that she did not at any time accept such conveyance or any benefit under it, or claim or exercise any ownership or control of the land, or its possession, or rents, or pay any taxes or for any improvements or repairs thereon; and that, on the other hand, complainant's husband and his co-tenant and co-purchaser, E. W. Baker, took immediate possession as absolute owners, had the lands assessed for taxes in their names, as owners, and paid such taxes annually, paid for all improvements and repairs, rented it out and collected and used the

rents as their own, and held, actually possessed and used the
26 lands openly, notoriously and adversely to the said Augusta H. Baker continuously for a period of more than fourteen years, without any recognition of the claim of said Augusta H. and without the assertion of any such claim on her part; and that complainant's husband was in such actual, open and adverse possession at the time of his death.

And complainant therefore charges and insists that the said Augusta H. Baker has abandoned her claim to such life estate, if any she ever had, and that both she and E. W. Baker are now estopped from setting up and claiming such life estate in the said Augusta H. in said lands, and from denying complainant's right to dower therein; and that any such claim of the said Augusta H. is barred by the statute of limitations of seven years.

(8) Complainant further states that, as she is informed and believes, the defendants Mrs. Augusta H. Baker and her son, E. W. Baker, who is acting in concert with her, claim that the said Charles Baker was a citizen of and domiciled in the State of Kentucky at the time of his death; and, consequently, that his personal estate is to be distributed according to the laws of the State of Kentucky, and not according to the laws of the State of Tennessee. And she is further informed that, by the laws of Kentucky, one-half of such personal estate goes to complainant as widow, and one-half to defendant Augusta H. Baker as mother of the intestate, the said Charles Baker; whereas by the laws of Tennessee the whole of such personal estate goes to complainant as widow and sole distributee.

Complainant again charges that her said husband was, at the time of his death, and had been all of his life, a citizen of and domiciled in the State of Tennessee and in the county of Hardin in said State; that he was born there, made that his home all his
27 life, and never at any time had or acquired a home elsewhere; that he and complainant were married there, and that neither of them ever changed or had any idea or intention of changing or abandoning that home and domicile; that while her said husband was for some years before his death engaged with his brother, E. W. Baker, who made his home and domicile at Paducah, Ky., and with other persons, in the mercantile business at that place, conducted by the corporation of Baker, Eccles & Company, he boarded at a hotel, with his family, the whole period; constantly declared that Paducah was not his home but that his home and citizenship was at Savannah, Tennessee, where he intended to return and permanently reside; refused to vote at Paducah, though often requested to do so, continued to be assessed for and to pay his poll taxes in Hardin County, Tennessee, and to vote there when he voted at all; and so well was it known at Paducah that he was not a citizen of that place, that for more than ten years after he engaged in business there, he was never assessed for poll taxes there, although if a citizen there he was liable for such taxes; and although he never claimed citizenship at Paducah, never voted nor paid a poll tax there, complainant is informed and believes that since her husband's death defendant E. W. Baker has paid poll-tax for him at Paducah for

the last two or three years of his life which said defendant claims had been assessed against him; whether such poll-taxes had really been assessed against her husband in his life time or not complainant does not know, but if so, she believes and charges that such assessments were either unknown to him, or if known, were repudiated and refused payment by him; he was a man who always had means, and paid his debts promptly, and especially his taxes; and she believes and charges that the payment of such poll-taxes for her

28 husband since his death by defendant E. W. Baker, if such payment has been made, was for the sinister purpose of producing some evidence of his citizenship in Kentucky in aid of the claims of said defendant and his mother heretofore mentioned in this bill. In fact, complainant charges that her husband, during the whole period of his engagement in business at Paducah, manifested in many ways, indeed in every way possible, to his friends and associates, both at Savannah and Paducah, and elsewhere, his purpose to retain his citizenship, domicile and permanent home at Savannah, Tennessee; and that he was preparing, for some time before his death, plans for the construction of a residence on his lands near Savannah, had selected and pointed out to his friends the site of such residence, and at the moment of his death was on his way to Savannah on a steamboat on the Tennessee River, the purpose of such trip being, in part at least, to further his purposes and plans looking to the building of his residence at Savannah in which he intended and purposes to spend the balance of his days.

(9) Complainant promptly, or on her appointment as administratrix, returned her inventory to the county court of Hardin County, reporting as assets coming to her hands the personalty hereinbefore mentioned, although the amount of the rents was not then definitely ascertained.

And at the December term of said County Court she made settlement—her husband's estate not being indebted except for funeral expenses, and a few small current bills of inconsiderable amount.

29 Upon such settlement, she was credited with the funeral expenses and debts paid by her, amounting to \$153.34; and the said County Court thereupon found and determined that said intestate Charles Baker, was a citizen of the State of Tennessee, and that complainant was entitled, as his sole distributee, to all the personalty of his estate after the payment of debts, including the stock hereinbefore mentioned with its accumulated profits or surplus, and the rents accruing for the year 1912 upon his one-half interest in the lands hereinbefore described.

Complainant, understanding and being confident that she was, as sole distributee of her husband, entitled to all his personalty, after payment of debts, did not apply to said county court for the assignment to her of a year's support. If for any reason it shall be determined that she is not so entitled, then and in that event she asks that she be assigned and given a year's support under the orders of this Honorable Court.

(10) Referring now to the defendants other than Mrs. Augusta H. Baker and E. W. Baker, complainant states:

That the said Barnhill lands, being lots No. 2 and No. 3 and the adjoining 100 acres hereinbefore described, were rented for the year 1912 for one-fourth of the cotton and one-third of the corn to be raised, to defendant J. W. Tackett, who has charge of the lands and produce and the collection and payment over of the rents; that he has up to this time collected several hundred dollars from the cotton crop and has deposited in defendant bank some two or three hundred dollars thereof to the credit of "Baker

30 Brothers"—that being their method of keeping the account; and said Tackett also has in his hands and under his control, possibly other moneys due as rents, and about three hundred and fifty (350) barrels of rent corn, and about four hundred (400) bales of rent hay—the exact amount not known to complainant; and defendant E. W. Baker will withdraw from said bank and from said Tackett all of said rents unless restrained by this Honorable Court. Complainant, as administratrix of her husband is entitled to one-half of said rents; and she does not desire to interfere with defendant E. W. Baker's right to collect and receive the other half.

That the said Baird lands, being those lying in the 6th Civil District hereinbefore described, were rented for the year 1912 to one C. R. Barnes, who has recently died, and to his sons, the defendants Jesse and Fayette Barnes, for the sum of \$300 due by note January 1, 1913. Defendant G. L. Barnes is the administrator of the said C. R. Barnes, deceased. Whether said note is made payable to "Baker Brothers", or to E. W. Baker and Charles Baker, complainant is not advised; but the defendant E. W. Baker, as she is informed and believes, will also collect the whole of this note unless restrained by this Honorable Court.

Complainant makes these charges concerning the purpose of defendant E. W. Baker with respect to said rents, because of the fact that he is claiming, as she is informed and believes, that she is not entitled to any of said rents whatsoever.

31 (11) Complainant brings this bill in her capacity as administratrix of her husband, Charles Baker, deceased, for the protection of her rights as such, as well as individually, for the protection of her individual and personal rights in the estate of her said husband. Copies of all deeds and conveyances and other title papers hereinbefore referred to, will be filed on or before the hearing if necessary.

(12) Premises considered, complainant prays:

1. That the parties named as defendants in the caption be made such according to the rule of your Honor's court; that copy bill and subpoena to answer issue and be served upon the resident defendants and that they be required to answer at an early rule day; that publication be made as required by law for the non-resident defendants, Mrs. Augusta H. Baker and E. W. Baker, and that they be required to answer this bill according to the rules of this Honorable Court, but not upon oath, their oaths to their answer being hereby expressly waived.

2. That the writ of injunction issue enjoining and restraining the defendants J. W. Trackett, Fayette Barnes, Jesse Barnes and

G. L. Barnes administrator of C. R. Barnes, deceased, from paying to defendants E. W. Baker and Augusta H. Baker or either of them, or to anyone for them or either of them, or upon the order of them or either of them, more than one-half of the rents accruing and due or to become due upon the lands described in this bill for the year 1912; and from paying or accounting to anyone other than complainant for the other one-half of said rents; and in like manner enjoining and restraining the defendant Bank from paying to said defendants Augusta H. Baker and E. W. Baker or either of them, or to anyone for them or either of them, or to or upon the order of "Baker Brothers", more than one-half of the proceeds of the rents aforesaid which have heretofore or may hereafter be deposited in said Bank; and from paying or accounting to any one other than complainant for the other one-half.

3. That upon the hearing your Honor will adjudge and decree:
 (a) That complainant's intestate, Charles Baker, was at the time of his death a citizen of Tennessee, and that complainant, as his widow, is his sole distributee and entitled to all his personal estate after payment of debts.

(b) That complainant is entitled to dower in all the lands described in this bill; and that the same be assigned to her under proper orders of this Honorable Court.

(c) That defendant Augusta H. Baker has no life estate in any of said lands in any manner interfering with complainant's right of dower.

(d) That complainant be also assigned and allotted a year's support out of the personal estate of her husband, if for any reason she be not held to be entitled to the whole of such estate as distributee.

(e) That the rents accruing to her husband for the year 1912, on the lands described in this bill, be collected and paid into court, and for this purpose, if necessary, a receiver be appointed; and that all such rents be adjudged to belong to complainant.

4. And finally, that complainant have all such other further and general relief as may be just and equitable in the premises.

This is complainant's first application for an injunction against defendants.

ROSS & ROSS,
 PITTS AND McCONNICO,
Solicitors for Complainant.

33 STATE OF TENNESSEE,
Hardin County:

Personall- appeared before me the undersigned Clerk & Master, Josie C. Baker, who being duly sworn states that all the averments in the foregoing bill as made of knowledge are true, and those made on information or belief, she verily believes to be true.

JOSIE C. BAKER.

Sworn to and subscribed before me this 26th day of December, 1912.

W. H. CARRINGTON,
Clerk & Master of the Chancery Court of said County.

To W. H. Carrington, Clerk & Master, Savannah, Tenn.:

Upon complainant filing the foregoing bill and executing injunction bond in the sum of Fifteen Hundred, you will issue the writ of injunction as prayed for in the foregoing bill.

This Dec. 27th, 1912.

E. L. BULLOCK,
Chancellor.

Order of Publication.

Entered on Rule Docket December 28th 1912, as to defendants E. W. Baker and Augusta H. Baker, as follows:

No. 1169.

JOSIE C. BAKER, Adm'r & Personally,
vs.
E. W. BAKER et al.

In this cause it appearing to the satisfaction of the undersigned from the bill which is sworn to that defendants E. W. Baker
34 . and Mrs. Augusta H. Baker are non-residents of the State,
so that ordinary process of law cannot be served on them.

It is therefore ordered that publication be made for four consecutive weeks in the Savannah Courier a newspaper published in Savannah, Tennessee, requiring the said non-resident defendants to be and appear before the Clerk & Master of the Chancery Court for Hardin County, Tennessee in the Courthouse in Savannah, on the 1st Monday in February 1913, and make defense to the bill filed herein, or the same will be taken for confessed as to the-, and set for hearing ex parte. This Jan'y 1st 1913.

W. H. CARRINGTON, C. & M.

Subpœna to Answer.

Issued Dec. 28th, 1912, for defendants J. W. Tackett, Fayette Barnes, Jesse Barnes, G. L. Barnes, adm'r of C. R. Barnes, deceased, and the First National Bank of Savannah, Tennessee, as follows:

STATE OF TENNESSEE:

To the Sheriff of Hardin County, Greeting:

We command you to summon J. W. Tackett, Fayette Barnes, Jesse Barnes, G. L. Barnes, Adm. of C. R. Barnes, dec'd and the First National Bank of Savannah, Tenn., if to be found in your County, to appear before the Clerk & Master of the Chancery Court, at Savannah, Tenn., in the Courthouse in Savannah, on the 1st Monday in Jan'y 1913; then and there to answer the original bill of complaint of Josie C. Baker vs. E. W. Baker, Mrs. Augusta H. Baker and

the above named defendants, and further do and receive what our said Court shall consider in that behalf; and this you shall in no wise omit, under the penalty prescribed by law. Herein fail not, and have you then and there this Writ.

35 Witness, W. H. Carrington, Clerk and Master of our said Chancery Court, at office, in the Courthouse at Savannah, Tenn. this 4th Monday in Oct. 1912, and the — year of American Independence.

W. H. CARRINGTON,
Clerk and Master.

Came to hand Dec. 30th, 1912, and executed the within subpoena to answer on all of the within named defendants as within commanded and left copy bill with def't 1st National Bank on this the 31st day of Dec. 1912.

J. A. SPENCER, *Sh'ff.*

Injunction Writ.

Issued Dec. 28th, 1912, as to defendants J. W. Tackett, Jesse Barnes, Fayette Barnes, G. L. Barnes, as administrator of C. R. Barnes, deceased, and the First National Bank, Savannah, Tennessee, as follows:

STATE OF TENNESSEE,
Hardin County:

To J. W. Tackett, Jesse Barnes, Fayette Barnes, G. L. Barnes, as Administrator of C. R. Barnes, deceased, and the First National Bank of Savannah, Tennessee, and to their Counsellors, Attorneys, Solicitors, and Agents, and each and every one of them, Greeting:

Whereas, in a certain suit this day instituted in our Court of Chancery at Savannah, Tennessee, by Josie C. Baker, administratrix, and personally, Complainant, against E. W. Baker, Mrs. Augusta H. Baker, said Bank and the persons above named, Defendants, the style of which case is Josie C. Baker, Adm'r and personally vs. E. W. Baker et al., the complainant having obtained from the Honorable E. L. Bullock, Chancellor, a fiat for a Writ of Injunction to issue to enjoin.

36 1. The said J. W. Tackett from paying to defendants E. W. Baker and Augusta H. Baker, or either of them, or to any one for them or either of them, or upon the order of them or either of them more than one-half of the rents accruing and due, or to become due upon the lands described in the bill filed in said cause, and known and designated as the Barnhill lands, and from paying or accounting to any one other than complainant Josie C. Baker for the other one-half of said rents.

2. To enjoin the said Jesse Barnes, Fayette Barnes and G. L. Barnes as administrator of C. R. Barnes, deceased, from paying to defendants E. W. Baker and Augusta H. Baker, or either of them, or to any one for them or either of them, or upon the order of them

or either of them, more than one-half of the rents accruing and due, or to become due upon the lands described in said bill for the year 1912, known as the Baird lands, and from paying or accounting to any one other than complainant for the other one-half of said rents.

3. And to enjoin the said First National Bank of Savannah from paying to said defendants, Augusta H. Baker and E. W. Baker, or either of them, or to any one for them, or either of them, or upon the order of them or either of them, or to or upon the order of Baker Brothers, more than one-half of the proceeds of the rents of said Barnhill lands which have heretofore been or may hereafter be deposited in said bank, and from paying or accounting to anyone other than complainant for the other one-half of said rents.

And the complainant having *exercised* the bond required by said fiat.

We therefore, in consideration of the premises aforesaid do strictly enjoin and command you the said J. W. Tackett, Jesse Barnes, Fayette Barnes, G. L. Barnes, administrator of C. R. Barnes, deceased, and the First National Bank of Savannah, and all and

37 every person before mentioned under the penalty prescribed by law, of you and every one of your goods, lands and tenants to be levied to our use, that you and every one of you do absolutely desist from doing any of the things and acts above mentioned, and that you specially do not pay to the said E. W. and Augusta H. Baker or to them or either of them, or to anyone for them, more than one-half of the rents of said lands, and that you do not pay or account to anyone other than complainant for the other one-half, and that you, the said Bank, do not pay to the said E. W. and Augusta H. Baker more than one-half of the rents of said lands for the year 1912, deposited with you to the account of Baker Brothers, or to anyone for them, or either of them, or upon the order of them or either of them, and that you do not pay to any one other than complainant the other one-half of said amount deposited with you until the hearing of this cause in our said Court of Chancery.

Witness, W. H. Carrington, Clerk and Master of our said Court at office in Savannah, Tennessee, on this, the 28th day of December, 1912.

W. H. CARRINGTON,
Clerk and Master.

The within injunction came to hand Dec. 30th 1912, and executed on all of the within named as within commanded on this, the 31st day of Dec. 1912.

J. A. SPENCER, *Sh'ff.*

38

Answer of J. W. Tackett.

Filed Feb. 3rd, 1913, as follows:

In the Chancery Court at Savannah, Tennessee.

JOSIE C. BAKER, Adm'x and Personally,

vs.

E. W. BAKER et al.

The Separate Answer of J. W. Tackett to the Bill Filed Against Him and Others in the Above Styled Cause on the — Day of December, 1912.

For answer to said bill or to so much and such parts thereof as apply to this defendant, and as necessary or material for him to answer, answering says:

That he admits that he has control of the lands described in the bill, as the Barnhill lands, situated in the 4th civil district of Hardin County, Tennessee, on the Tennessee River; that his business is to rent said lands and to see to the collection of the rents, and that he had such control of the lands in the year 1912, and collected a part of the rents.

This defendant collected as rents of said lands and deposited to the account of Baker Bros., in the First National Bank of Savannah, Tennessee, \$13.32, in 1912 of the crop 1911, and of the crop of 1912 he sold rent cotton to the amount of \$220.62, and deposited the same on the various and respective dates of the sales made by him, to the account of Baker Bros. in said First National Bank, making the full — deposited by this defendant to said account in said bank from the month of May to the time the injunction was served on him in this cause, the sum of \$233.94, arising from the rents of said lands.

39 Before the injunction was served on defendant, he had sold an additional part of the rent cotton for the sum of \$15.40, but had not deposited same, and defendant now has in his hands as proceeds of said rents the said sum of \$15.40.

This defendant has in his hands and under his control rent corn from said lands of the crop of 1912, about 350 barrels, as he estimates it, but the exact quantity cannot be stated because the same has not been measured, and the 350 barrels is a mere estimate, there may be some less and there may be some more. Said corn is in the barn situated on said lands, known as the W. P. Barnhill barn, about one mile south of Savannah.

This defendant also has in his hands and under his control rent hay from said land of the crop of 1912, to the amount of about 450 bales, and this is a mere estimate, there may be a few bales more, or a few bales less. This hay consists of millet, peas and oats, and is stored in said barn.

Defendant states that he also holds accounts for rent hay sold by

him before the service of the injunction one against George Randolph for \$5.85, one against Miles Tacket for \$3.50, and one against Dr. G. C. Morris for \$13.65.

This defendant states that he holds said sum of \$15.40 said corn hay and accounts subject to the orders of the court in this cause, and is ready to deliver the same as ordered by the court.

And now having fully answered, this defendant prays to be hence dismissed with his reasonable costs.

J. W. TACKET.

40 *Answer of First National Bank of Savannah. Filed Feb. 3rd, 1913.*

In the Chancery Court at Savannah, Tennessee.

JOSIE C. BAKER, Adm'x and Personally,

vs.

E. W. BAKER et al.

The Separate Answer of the First National — of Savannah, Tennessee, to the Bill Filed Against It and Others in the Above Styled Cause on the — Day of December, 1912.

For answer to said bill or to such parts thereof as apply to this defendant, answering it says:

That it has an account on its books of Baker Brothers, known to this defendant as E. W. Baker and C. Baker.

The amount of said account due Baker Bros. as shown by the books of this defendant is \$233.94.

That all of said amount was deposited at various dates throughout the year 1912 by defendant, J. W. Tackett. The sum of \$6.50 was deposited on the 27 day of May, 1912, and \$6.82 on the 1st day of July 1912, and all of the balance of said account was deposited by said Tacket in small sums from the 9th day of October, 1912 to the 14 day of December, 1912.

The defendant holds said funds subject to the orders of the Court in this cause, and is ready to pay over the same to whomsoever the court shall direct.

And now having fully answered, this defendant prays to be hence dismissed with its reasonable costs.

THE FIRST NAT. BANK,
By A. J. WILLIAMS, *Cashier.*

*Affidavit and Certificate of Publisher of Publication of Non-Resident Notice as to Defendants E. W. Baker and Augusta H. Baker.
Filed Feb. 12th, 1913.*

41-50 STATE OF TENNESSEE,
Hardin County:

Publisher's Certificate.

Personally appeared before me, W. H. Carrington, Clerk and Master of the Chancery Court at Savannah, Tennessee W. O. Mangum Publisher of the Savannah Courier, and made oath in due form that the notice hereto attached in the case of Josie C. Baker vs. E. W. Baker has been duly published in said paper for 4 consecutive weeks, as required by law, beginning on the 3 day of Jan'y 1913.

W. O. MANGUM.

Sworn to and subscribed before me, this the 12th day of Feb. 12, 1913.

W. H. CARRINGTON.

The notice attached is as follows:

Non-resident Notice.

In the Chancery Court at Savannah, Tennessee.

JOSIE C. BAKER, Adm'x and Personally,

vs.

E. W. BAKER.

In this cause it appearing to the satisfaction of the undersigned from the bill which is sworn to, that the defendants E. W. Baker and Mrs. Augusta H. Baker, are non-residents of the State so that ordinary process of law cannot be served on them. It is therefore ordered that publication be made for four consecutive weeks in the Savannah Courier, a newspaper published in Savannah, Tennessee, requiring the said non-resident defendants to be and appear before the Clerk and Master of the Chancery Court for Hardin County, Tenn., in the Courthouse in Savannah on the first Monday in February, 1913, and make defense to the bill filed herein or the same will be set for hearing ex parte. This Jan. 1st, 1913.

W. H. CARRINGTON, C. & M.

* * * * *

51 *Answer of G. L. Barnes, Administrator, Jesse Barnes and Fayette Barnes.*

Filed April 5th, 1913.

In the Chancery Court at Savannah, Tennessee.

No. 1168.

JOSIE C. BAKER, Adm'x and Personally,

VS.

E. W. BAKER et al.

The Answer of Defendants, G. L. Barnes, as Administrator of C. R. Barnes, dec'd; Jesse Barnes, and Fayette Barnes to the bill filed against them and others in the above styled cause, on the 28th day of December, 1912.

For answer to said bill or to so much and such parts thereof as necessary for them to answer, these defendants say:

That C. R. Barnes, decd. rented for the year 1912 the lands described in the bill as the Baird Lands, and executed his note payable to Baker Brothers, being E. W. and Charles Baker, for the sum of \$247.00 due January 1st, 1913.

That while defendants, Jesse Barnes and Fayette Barnes cultivated a portion of the lands, yet the note was made by C. R. Barnes alone.

Defendants admit that C. R. Barnes died intestate in Hardin County, in 1912, and that defendant G. L. Barnes is the administrator of his estate under appointment of the County Court of said County.

Defendant, G. L. Barnes, as administrator admits that said note was unpaid at the time the bill was filed in this cause and this defendant as administrator states that he is ready and willing

52 to pay the amount due on the same at any time, and would have paid the same had it not been for the injunction in this cause. This defendant desires to pay the amount of said note to the proper persons entitled to receive the same for the protection of himself and the estate of his intestate, and stands ready to make payment as may be ordered by the Court.

And now having fully answered all of that part of the bill that applies to them, these defendants pray to be hence dismissed with their reasonable costs.

G. L. BARNES.
C. L. BARNES.
W. J. BARNES.

Order pro Confesso Made and Entered on Rule Docket April 7th, 1913, as to Defendants E. W. Baker and Augusta H. Baker.

No. 1168.

JOSIE C. BAKER, Adm'x & Personally,

VS.

E. W. BAKER et al.

In this cause it appearing that the defendants, E. W. Baker and Mrs. Augusta H. Baker, are regularly before the court by publication duly made as required by law, requiring and commanding them to appear and make defense to the bill filed against them in this cause by the first Monday and rule day of February, 1913, and it further appearing that said defendants have wholly failed to make defense to said bill within the time required by law; it is therefore ordered that complainant's said bill be, and the same is hereby taken for confessed as to the said defendants, E. W. Baker 53-134 and Mrs. Augusta H. Baker, and the cause as to them is set for hearing ex parte. This, the 1st Monday and rule day of April, 1913.

W. H. CARRINGTON,

Clerk and Master.

* * * * *

135 *Caption of Minutes of Court, April Term, 1913.*

SAVANNAH, TENN., Monday, April 28th, 1913.

STATE OF TENNESSEE,
Hardin County:

Be it remembered that a regular term of the Chancery Court of the 8th Chancery Division of the State of Tennessee, begun and held in and for said County of Hardin at the Court house in the town of Savannah, Tennessee, on the 28th day of April, 1913, it being the fourth Monday of said month, and being the time fixed by law for holding said Court.

The Honorable E. L. Bullock Chancellor being absent,

The Court was duly opened by W. H. Carrington, Clerk & Master of said Court and J. A. Spencer Sheriff of said County.

Thereupon Court adjourned until 8 o'clock Wednesday morning April 30th, 1913, by order of the Chancellor.

W. H. CARRINGTON, C. & M.

April 30th, 1913, Court met pursuant to adjournment, Honorable E. L. Bullock Chancellor being present when the following proceedings among others were had and entered of record, to-wit: Friday, May 2nd, 1913.

(Decree, see next page.)

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Decree, April Term, 1913.

No. 1168.

JOSIE C. BAKER, Adm'x & Personally,
vs.
E. W. BAKER et al.

This cause was heard before Hon. E. L. Bullock, Chancellor on the 2 day of May, 1913, on complainant's bill, answer of defendants, J. W. Tacket, First National Bank of Savannah, Jesse Barnes, Fayette Barnes and G. L. Barnes, deceased, order pro confesso as of defendants E. W. Baker, and Mrs. Augusta H. Baker, the proof in the cause, including certified copies of the deeds to the land described in the bill and upon the entire record, from all of which it duly appearing to the Court, that Charles Baker died in the State of Tennessee, intestate on the 1st day of September, 1912, and left surviving him the complainant, Josie C. Baker, as his widow and sole distributee, and as his only heir at law, he left surviving his brother, defendant, E. W. Baker.

It further duly appearing to the Court that said Charles Baker died seized and possessed of an undivided one-half interest in certain tracts of land situated in the 4th and 6th Civil Districts of Hardin County, Tennessee; one part known as the J. N. Baker and also known as the Barnhill lands situated in said 4th District near the town of Savannah, composed of four tracts but lying adjoining and form and are treated and considered as one body, and bounded and described as follows:

137 One tract, of Lot No. 2: Beginning at a stake, 2 hackberry and sycamore pointers on the bank of the Tennessee River, the same being the northwest and lower corner of Lot No. 1 in the division of said J. N. Baker lands; runs thence down the river with the meanders as follows, to wit: N. 55 degrees E. 8½ poles N. 62 degrees E. 30 poles, N. 59 degrees E. 41 poles, N. 71 degrees E. 34 poles, N. 67 degrees E. 10½ poles to a stake, 2 hackberry and red elm pointers on the bank of the river; thence south 7 degrees east 133 poles to a stake in the center of Mud Creek, the same being the corner of said lot No. 1; thence with the line of said lot No. 1 north 59 degrees west 146 poles to the beginning, containing 50 acres.

The other tract of Lot No. 2: Beginning at a stake in the center of Mud Creek with hackberry, ash and hornbeam pointers, the same being the lower corner in the creek of said lot No. 1; runs thence east with the N. B. line of the same 847 poles to a stake on the west side of the Florence road in the east boundary line of the said tract, of which this is a part, with post oak and black oak pointers, the same being the N. E. corner of said lot No. 1; thence north with the E. B. Line of the tract of which this is a part 17 1/5 poles to a post oak on the east side of the Florence road by the corner of Maxwell's field east of the road; thence went with Maxwell's field east of the road; thence west with Maxwell's S. B. Line 89 poles to a stake,

Maxwell's S. W. Corner; thence north with his W. B. Line 18 $\frac{4}{5}$ poles to a stake and sweet gum pointers in the same; thence west 726 poles to a stake in the center of Mud Creek with hackberry and 2 maple pointers; thence up the center of the creek with its meanders as follows, to-wit: S. 24 degrees W. 14 poles; S. 47 $\frac{1}{2}$ degrees W. 16 $\frac{1}{2}$ poles, S. 24 degrees W. 14 poles to the beginning, containing 186 $\frac{3}{4}$ acres, and making the total number of acres in said lot No. 2, 236 $\frac{3}{4}$ acres.

Lot No. 3 adjoining lot No. 2 on the north is bounded as follows: Beginning on the east side of the Tennessee river at the southwest corner of a tract of land belonging to the heirs of Geo. F. Benton, and purchased by said Benton and D. A. Kerr, and being on the bank of said river; running thence south 38 poles to a stake; thence east 422 poles, thence south 48 poles; thence west with the north boundary line of the tract known as Lot No. 2 in the division of said J. N. Baker lands 726 poles to a stake in the center of Mud Creek with hickory and 2 maple pointers, the same being the lower corner in the creek of said lot No. 2; thence up the creek with its meanders in the center, as follows, to-wit: S. 14 degrees W. 14 poles S. 47 $\frac{1}{2}$ degrees W. 16 $\frac{3}{4}$ poles S. 24 degrees W. 14 poles; S. 40 degrees W. 5 $\frac{1}{2}$ poles, S. 52 degrees W. 13 $\frac{1}{2}$ poles S. 58 $\frac{1}{2}$ degrees W. 7 $\frac{1}{2}$ poles; S. 44 degrees W. 16 poles to a stake in the center of the creek, the same being the corner in the creek of that portion of said lot No. 2 that lies between the creek and the river; thence with the east boundary line of the same north 7 degrees W. 123 poles to a stake and hackberry and red elm pointers, the lower and north corner of the same on the bank of the river; thence down the river with its meanders to the beginning containing 236 $\frac{3}{4}$ acres.

The 100 acres tract adjoining Lot No. 3 on the north is bounded as follows: Beginning on the southwest corner of the Benton land, on the east bank of the Tennessee river; runs thence south 38 poles to a stake in the N. B. line of the Baker land (being the N. B. line of the above described Lot No. 3) runs thence east 428 poles to a stake; thence north 38 poles; thence west 428 poles to the beginning, making a total of about 573 $\frac{3}{4}$ acres in the 4th. Civil District. Excluding from the East end of said tracts two small tracts containing respectively 2 $\frac{85}{60}$ acres and 3 $\frac{121}{160}$ acres conveyed to Lewis Morris by deeds recorded in Deed Book "EE" pages 30 to 31.

The lands in the 6th. civil district of which said Charles Baker died the owner of an undivided one half interest are situated on the Tennessee river, are composed of two tracts and are described as follows:

One tract in 6th. District: Beginning on a black locust standing on the west bank of the Tennessee river with ironwood pointer; runs thence up the river with its meanders N. 64 degrees E. 47 $\frac{1}{4}$ poles to a stake with lynn and beech pointers; thence south 102 poles to a stake at the foot of a ridge with hackberry and persimmon pointers; thence west 45 $\frac{3}{4}$ poles to a stake in a pond with 2 Tupelo gum pointers; thence north 74 poles to the beginning, containing 25 and $\frac{8}{160}$ acres.

The other tract in 6th. District. Beginning at a stake south of a pond in the field, and runs thence north 92 poles to a stake on the west bank of the Tennessee River with sweet gum and birch pointers; thence up the river with its meanders N. 61 degrees E. 47 $\frac{4}{5}$ poles to a stake with 2 large white oak pointers; thence south 17 degrees east 103 $\frac{3}{4}$ poles to a stake on top of a ridge with a black oak pointer on the south side of a pond; thence down the bottom running on the south side of the pond S. 68 degrees W. 20 poles S. 82 degrees W. 22 poles, S. 74 degrees W. 32 poles to the beginning, containing 36 and 82/160 acres, making 61 $\frac{3}{4}$ acres in the 6th. District.

It further appearing to the Court that said Charles Baker was the owner at the time of his death of two hundred and seventy (270) shares of the par value of One Hundred (100) Dollars each, of the capital stock of Baker, Eccles & Company, a corporation chartered and organized under the laws of the State of Kentucky, and having its principal office and place of business at Paducah, Kentucky, which stock is represented by Certificates Nos. 11, 12, 13 and 14 for fifty (50) shares each, Certificates Nos. 15 and 21 for thirty (30) shares each, and Certificate No. 19 for ten (10) shares, that said certificates were duly issued to and in the name of the said Charles Baker by said corporation and owned by him and in his possession at the time of his death; that he was also the owner at the time of his death of several thousand dollars' profits and surplus due from said corporation on said stock; that he also died the owner of one half of the rents accruing for the year 1912 on the above described lands, the proceeds of which are now in the hands of J. W. Tackett, the receiver appointed in this case, including one-half of the amount on deposit to Baker Bros., in the First National Bank of Savannah and that he was the owner of some other personalty situated in Hardin County, Tennessee.

It appearing and the Court being of opinion that the rents of said lands for the year 1912 are personal property and will pass as such to the administratrix of said Charles Baker, dec'd, it appearing that the said Charles Baker and E. W. Baker were tenants at sufferance of the life tenant, and it is so adjudged and decreed.

It further appearing to the Court that the complainant was duly appointed administratrix of the estate of her said husband, Charles Baker, deceased, by the County Court of Hardin County, Tennessee, and as such returned her inventory of said estate to said County Court, paid the small indebtedness of the estate and duly made settlement of the estate as such administratrix with said Court on the 2nd. day of December, and that by decree of said County Court it was adjudged and decreed that said Charles Baker was a citizen of Hardin County, Tennessee, and that complainant as the widow of said decedent was, as his sole distributee, entitled to all of the personal property of the estate after the payment of the debts of the estate, which it appears had been paid, and which decree specifically adjudged the right of complainant as such distributee to said 270 shares of stock and the accumulated profits thereon.

It further app-raing to the Court, from the proof in this cause,

(that the said Charles Baker at the time of his death was a citizen of and had his domicile at Savannah, Tennessee, that at no time was he a citizen of and domiciled at Paducah, Kentucky, that all of his life he was a citizen of, and had his domicile at Savannah, Tennessee, and the Court so adjudges and decrees. The Court being of opinion that the complainant as the widow of said Charles Baker, deceased, is the sole distributee of his estate and as such is entitled to all of the personal property of which he died the owner, so adjudges and decrees.

The Court being of Opinion that the complainant as the widow of said Charles Baker, dec'd, is entitled to dower in the one-half interest in that part of the lands aboved described as lot No. 3 and the tract of 100 acres adjoining the same on the north, but that the defendant, Mrs. Augusta H. Baker, is the owner of a life estate in the other lands hereinbefore described and that therefore, the complainant is not entitled to dower in said lands described as lot No. 2 and the Mary F. Baird lands, the court being of opinion that there has been no abandonment of her life estate in the said lands by the said Augusta H. Baker, conveyed to her by Mary F. Baird and W. P. Barnhill and wife, and that her interest therein has not been barred by the statutes of limitation, and it is so adjudged and decreed.

It is therefore adjudged and decreed by the Court that complainant is entitled to have assigned and set apart to her one third of one half of said lot No. 3 and of said 100 acre tract as her dower estate therein and S. M. Watson and L. B. Hinton, two freeholders of this county, and G. W. Harbert, a competent surveyor of the county all of whom are unconnected by affinity of consanguinity with any parties, be and they are appointed commissioners to allot and set apart to complainant as the widow of said Charles Baker, dec'd one third of one half of said lot No. 3 and said tract of 100 acres hereinbefore described according to quality and quantity as dower, and they will make their report accompanied by a plat to the present term of this court if practicable.

It is further adjudged and decreed by the Court that the said Charles Baker at the time of his death was a citizen of and had his domicile at Savannah, Tennessee, and that the complainant as his widow is his sole distributee, and as such is entitled to all of the personal estate of the said Charles Baker, after payment of such debts as owed by him at the time of his death, and entitled to receive from J. W. Tacket, the receiver in this cause, the one half of the proceeds of the rents of said lands and one half of the amount of the deposit to the credit of Baker Bros., in said First National Bank, and to said 270 shares of stock in said corporation of Baker, Eccles & Co., and the accumulated profits and surplus due from said corporation thereon.

It appearing that complainant has in her possession the aforesaid certificates issued by said corporation, Baker, Eccles & Co., to the said Charles Baker, showing his ownership of said 270 shares of stock, and she having brought the same before the Court in this cause for adjudication by the Court of the rights of the parties to said stock represented by said certificates, and the Court being of opinion

that the title to said stock is in complainant and that she 143-148 is the sole owner of the same; it is therefore ordered, adjudged and decreed by the Court that complainant is entitled to retain and hold the said certificate as evidence of her ownership of said stock under this decree, and to have issued to her by said corporation upon surrender of said certificate and her demand therefor, a new certificate or certificates in her own name, in lieu of said certificates issued to said Charles Baker; and that complainant is entitled to demand of, have paid to her, and to receive from said corporation the amount of the accumulated profits and surplus, or profits or surplus due from said corporation on said stock, and any and all other amounts due by it to said Charles Baker.

It is further adjudged and decreed by the Court, that neither defendants, Augusta H. Baker or E. W. Baker, have any title to or interest in said 270 shares of the capital stock of said corporation, Baker, Eccles & Co., or any part thereof, or in the accumulated profits or surplus due on said stock, or of any other personalty belonging to the estate of the said Charles Baker deceased, but that the title and right thereto, and to the whole of the same, is in complainant, as aforesaid, first in the capacity of administratrix of his estate and on settlement thereof as his widow and sole distributee.

It is further ordered and decreed by the Court that the complainant pay all costs of the suit incident to the allotment of dower; the costs of the receivership will be paid out of the funds in the hands of the receiver due the estate of Charles Baker deceased, and the receiver will pay out of any funds in his hands due defendant E. W. Baker the remaining costs of the cause, and if none, or not a sufficient amount thereof to pay said costs, the same will be paid by complainant.

* * * * *

149 STATE OF TENNESSEE,
Hardin County:

I, W. H. Carrington, Clerk and Master of the Chancery Court at Savannah, Hardin County, Tennessee, do hereby certify that the foregoing is a full, true and perfect transcript of the record and bill of costs remaining in my office in the cause of Josie C. Baker, Administratrix and Personally vs. E. W. Baker, Augusta H. Baker, J. W. Tacket, Jesse Barnes, Fayette Barnes, G. L. Barnes, administrator of C. R. Barnes, dec'd, and the First National Bank of Savannah, Tennessee, as the same appears from the records and files of said Court.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Savannah, Tennessee, this, the 27th day of May, 1913.

W. H. CARRINGTON,
Clerk & Master.

STATE OF TENNESSEE,

Hardin County:

I, E. L. Bullock Chancellor of the Eighth Chancery Division of the State of Tennessee, and sole Judge of the Chancery Court within and for Hardin County, Tennessee, the same being a court of record, do hereby certify that the signature attached to the above certificate purporting to be that of W. H. Carrington, is his genuine signature, and that he was at the time of the date of said certificate, Clerk and Master of said Chancery Court, and as such, full faith and credit are due all of his official acts; and that the attestation of said clerk is in due form of law and by the proper officer.

In Witness whereof I have hereunto set my hand and affixed the seal of said court, this the 30th day of May, 1913.

[SEAL.]

E. L. BULLOCK,

*Chancellor and Sole Judge of the Chancery
Court of Hardin County, Tenn.*

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STATE OF TENNESSEE,

Hardin County:

I, W. H. Carrington Clerk and Master of the Chancery Court within and for said County of Hardin, the same being a Court of record, do hereby certify that the signature attached to the above certificate purporting to be that of E. L. Bullock is his genuine signature, and that he was at the time thereof Judge of said Chancery Court, and as such, full faith and credit are due all his official acts.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Savannah, Tennessee, this the 3rd day of June, 1913.

[SEAL.]

W. H. CARRINGTON,

Clerk & Master.

The following is the Summons which issued on the foregoing petition, viz:

Summons.

McCracken Circuit Court.

Summons. Equity.

The Commonwealth of Kentucky to the Sheriff of McCracken County, Greeting:

You are commanded to Summon Baker, Eccles & Company to answer in ten days after the service of this Summons, a petition filed in equity against it in McCracken Circuit Court, by Josie C. Baker, Individually and as Administratrix of Charles Baker, deceased and warn it that upon its failure to answer the petition will be taken for confessed, or it will be proceeded against for contempt, and you will make due return of this Summons within ten days after the service thereof to the Clerk's office of said Court.

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Given under my hand, as Clerk of said Court, this the 21st day of June 1913.

J. A. MILLER, *Clerk*,
By P. H. THOMPSON, *D. C.*

The following is the Sheriff's Return on the foregoing Summons, viz:

Sheriff's Return on Summons.

I have this day & date executed the within summons upon Baker, Eccles & Company by delivering to E. W. Baker, President of said corporation and its chief officer and agent in McCracken County, Ky. on this day, a true and correct copy of this the within summons.

Given under my hand and official title this June 21, 1913.

GEO. W. HOUSER, *Sheriff*,
By S. C. BROOKSHIRE, *D. S.*

Afterwards, to-wit: In vacation on the 1st day of September, 1913 the following answer was filed in the Clerk's office of the above named Court, viz:

Answer.

The defendant, Baker, Eccles & Company, for answer to plaintiff's petition says it is untrue and it denies that plaintiff has been all her life a citizen of the State of Tennessee, though she may be a citizen now of said State. It denies that Charles Baker died while a resident of, or while domiciled in the State of Tennessee; it denies that the County Court of Hardin County, Tennessee had jurisdiction or authority to appoint Josephine C. Baker administratrix of the estate of Charles Baker, deceased, at its November term 1912, 152 or on the 25th day of November, 1912, or at any other time, and it denies that she was duly appointed such administratrix by said Court at any time; it denies that the estate of Charles Baker was rightfully or could be distributed or settled in accordance with the laws of the State of Tennessee, because defendant says that said Charles Baker was at the time of his death, and had been for many years prior thereto, a citizen and resident and domiciled in Paducah, McCracken County, Kentucky.

It is true that the plaintiff did on the 28th day of December, 1912, file a bill in the Chancery Court at Savannah, Tennessee, and among other things did seek to have cancelled deeds made by Charles Baker and E. W. Baker, and Mrs. Annie Barnhill, sister of said Charles Baker and E. W. Baker, to Mrs. Augusta Baker, mother of said parties named to some lands in said state of Tennessee, and did claim all of said lands which once belonged to said Charles Baker as her own, to the exclusion of the rights of said Charles Baker — mother, Mrs. Augusta Baker. It is true that the certificates of stock in Baker, Eccles & Company belonging to Charles Baker, deceased, were in the possession of the plaintiff, Josephine C. Baker, at the

time she was appointed administratrix of the estate of Charles Baker, deceased, by the County Court of Hardin County, Tennessee, but defendants say that she wrongfully and without right obtained possession of said certificates of stock after the death of her husband from the First National Bank of Paducah, Kentucky, where said Charles Baker had placed them for safe keeping, where they were deposited by him with instructions to notify E. W. Baker, his brother, his nephew, William Baker, or his wife Mrs. Josephine Baker in the event of his death. They say that after the death of said Charles Baker the said Mrs. Josephine Baker procured said bank

153 to deliver to her said certificates of stock, and in that way obtained possession of same. It is true that the said plaintiff made demand upon defendant to transfer the 270 shares of stock in the name of Charles Baker to said plaintiff, individually, and likewise demanded of it any money belonging to the estate of said Charles Baker, deceased; defendant says that at the time of the demand for the transfer of said stock, in the name of Charles Baker, deceased, (at the time of his death) no certificate of stock or stubs therefor appeared on its books as belonging to Charles Baker, deceased; that all of the stock standing in the name of Charles Baker, deceased, had been transferred to other persons in obedience to a judgment of the Circuit Court of McCracken County, Kentucky, as will more fully hereinafter appear; that all of the money belonging to the estate of Charles Baker, at the time of said demand, had in obedience to the orders of the said McCracken Circuit Court been delivered by defendant to Mrs. Augusta H. Baker, administratrix of the estate of Charles Baker, as will more fully hereinafter appear.

It is not true and it denies that the County Court of Hardin County, Tennessee, had full or any jurisdiction of the personal estate of Charles Baker, deceased; it denies that the proceedings therein were regular or in accordance with the law of said state; it denies that the Chancery Court of Hardin County, Tennessee, had jurisdiction either of the subject matter or of this defendant, or the proceedings therein were regular or binding or of any effect so far as this defendant is concerned, for defendant says it was never served with process in said proceedings, nor notified by the service of a summons, nor did it enter its appearance to said proceedings in said Chancery Court. It denies that plaintiff is now, or ever has been, as matter of fact or as matter of law, or by virtue of any judgment or decree of any County Court or Chancery Court of Hardin County, Tennessee, or by virtue of any Statute or other law of the State of Tennessee, the owner or holder of the certificates of stock for 270 shares or any number of shares in this corporation other or further than one-half of said 270 shares, or that she is either 154 the equitable, legal or real owner, or entitled to collect in her own or any right any indebtedness of the defendant to the estate of her deceased husband, Charles Baker, with or without interest or accumulations or profits.

It denies that she is entitled to receive or collect for herself as administratrix, or in any representative capacity, any of said certifi-

cates of stock, or any amount of money or other personal property from this defendant.

Paragraph No. 2.

Defendants say that Charles Baker died on the 1st day of September 1912, a resident of and domiciled in Paducah, McCracken County, Kentucky, intestate, and left surviving him, as his only heirs at law, his wife, the plaintiff, and his mother Mrs. Augusta Baker; that on the 27th day of November 1912 two regular terms of the McCracken County Court having passed, and plaintiff, said Josephine Baker, the surviving wife of said Charles Baker, deceased, having failed to qualify as the personal representative of the estate of said Charles Baker, Mrs. Augusta Baker, his mother, being duly entitled to administer upon his estate under the laws of Kentucky, the place of his residence, was by the McCracken County Court duly appointed administratrix of said Charles Baker, deceased; that after the appointment of said administratrix she caused the estate of said Charles Baker, deceased, to be appraised and the money and personal property, belonging to said Charles Baker, deceased, held by defendant, was in obedience to the demand of said administratrix delivered to her, and she yet holds and controls the same. Afterwards the said Mrs. Augusta Baker, as administratrix of said Charles Baker, deceased, commenced her action in the McCracken Circuit Court against the plaintiff herein as the surviving widow of Charles Baker, deceased, and this defendant and the unknown creditors of Charles
155 Baker, deceased; that said action progressed to judgment on the 13th day of February 1913, said McCracken Circuit Court adjudged and determined among other things that:

"Said defendant, Baker, Eccles & Company, he and they are directed to cancel all certificates of stock issued by the said Company to the said Charles Baker, deceased, and to reissue one-half of said 270 shares to the order of Mrs. Josephine C. Baker, surviving widow of said decedent, and one-half to the order of Mrs. Augusta H. Baker, surviving mother of said decedent".

And defendant in obedience to the judgment and decree of said McCracken Circuit Court did reissue to said Mrs. Josephine Baker, and to Mrs. Augusta H. Baker certificates of stock, for the certificates held by Charles Baker, deceased, as it was directed and adjudged to do by said McCracken Circuit Court, and deliver said certificates of stock to Mrs. Augusta H. Baker, administratrix of Charles Baker, deceased. So defendant says it now has no property in its possession belonging to the estate of Charles Baker, deceased, which facts were well known to plaintiff at the time this suit was instituted; that all of his property is in the possession of his administratrix, Mrs. Augusta H. Baker, or has been paid out to her order.

Wherefore, defendant prays to be dismissed and for its costs, and for such other and further relief as in law or equity it may be entitled to receive.

WHEELER & HUGHES.

Afterwards to-wit: In vacation on the 1st day of September, 1913, the following petition of Mrs. Augusta H. Baker, Administratrix of Charles Baker, deceased, to be made a party defendant hereto was filed in the Clerk's office of the above named Court, viz:

156 *Petition of Mrs. Augusta H. Baker, Adm'x of Chas. Baker, Dec'd, to Be Made Party Def't Hereto.*

The petitioner, Mrs. Augusta H. Baker, administratrix of Chas. Baker, deceased, says that she is interested in the matters and things involved in this controversy, and offers this her petition herein.

She says that she is the mother of Charles Baker, who died on the 1st day of September, 1912; that Charles Baker resided in and was a citizen of Paducah, McCracken County, Kentucky, for about twelve years prior to his death; that he had no children; he died intestate and under the law of the State of Kentucky, his estate descended one-half of the surplus personalty to his wife, who is the plaintiff, Josephine C. Baker, the other half to this petitioner, his mother; that upon the death of said Charles Baker, the defendant, Josephine C. Baker, left Paducah, where she had resided with her husband for twelve years, and is now, or pretends to be a resident and citizen of the State of Tennessee.

She says that after two county courts of McCracken County, Kentucky, had passed, and after she had ascertained that the plaintiff, Josephine C. Baker, would not apply for letters of administration from the McCracken County Court, but would pretend and claim that Charles Baker was a resident of the State of Tennessee at the time of his death, this petitioner applied to the McCracken County Court for letters of administration upon the estate of Charles Baker, and she was on the 27th day of December 1912, duly and regularly appointed administratrix of said estate; a copy of the order appointing said petitioner administratrix, aforesaid, is filed herewith as part hereof, marked "A", and upon her appointment she executed bond, which was accepted and approved by the Court, a copy of which bond is filed herewith as part hereof, marked "B".

She says that as soon as she was appointed administratrix of said estate of Charles Baker, she caused the same to be appraised, and that she took possession thereof, and now holds the same except such sums as she has paid out for purposes hereinafter set forth. She says that on the — day of —, after her appointment as such administratrix, she filed a suit in the McCracken Circuit Court to settle the estate of Charles Baker, deceased; that she made the plaintiff, Josephine C. Baker, a party defendant to said action; that said Josephine C. Baker had both actual and constructive knowledge of the pendency of said suit, and the purpose thereof; that in said suit this petitioner, as plaintiff, charges that Charles Baker was a resident of McCracken County, Kentucky, at the time of his death, and that his estate was entitled to be, and as matter of law must be, administered according to the laws of the state of Kentucky, and thereupon on the 13th day of February, 1913, said McCracken Circuit Court did adjudge and determine that Charles Baker was a

resident of McCracken County, Kentucky, at the time of his death; that his estate after the payment of debts, should be divided one half to Mrs. Josephine C. Baker, his surviving widow, and one half to Mrs. Augusta H. Baker, his mother; that he left no children; that Baker, Eccles & Company, one of the defendants to said action, a trading corporation of Paducah, Kentucky, in which said Charles Baker, deceased, owned certificates of stock numbering 270 shares of the par value of \$100.00 per share, should cancel all certificates issued to said Charles Baker, and reissue the same, one half to this petitioner and one half to the order of Mrs. Josephine C. Baker; that upon the rendition of said judgment, this petitioner caused said Baker, Eccles & Company to reissue said certificates of stock, belonging to the estate of said Charles Baker, in accordance with the judgment of the McCracken Circuit Court, and she now holds the same as administratrix of said Charles Baker, deceased; she says that she notified Mrs. Josephine C. Baker that she held said certificates
 158 of stock subject to her order, and one half of the surplus personalty of said Charles Baker likewise to her order, and offered to deliver the same to the said Josephine Baker upon the execution by her of a receipt for said certificate of stock, and said one half of the surplus personalty of said Charles Baker's estate, but the said Mrs. Josephine C. Baker declined to execute such receipt, in fact ignored the request of this petitioner entirely.

She says that the judgment of the McCracken Circuit Court was and is binding and conclusive upon the said Mrs. Josephine C. Baker, and determines and adjudges the citizenship of said Charles Baker and its findings and judgment that said Charles Baker was a citizen of McCracken County, Kentucky, is conclusive upon the said Mrs. Josephine C. Baker, and all persons interested in the estate of said Charles Baker, deceased.

She says that she did not have in her possession, at any time, the certificates of stock issued by Baker, Eccles & Company to Charles Baker, deceased; that before the death of Charles Baker he deposited them in a box or safety vault in the First National Bank of Paducah, Kentucky, with a memorandum of instructions to the officers of said bank, that in the event of the death of said Charles Baker said bank should notify E. W. Baker, brother of said Charles Baker, or William Baker, his nephew, or the plaintiff, Josephine Baker; that after the death of said Charles Baker, said Josephine Baker induced said bank to deliver the certificates of stock to her; that the action of the said bank was wrongful and illegal, but not intentionally so, and the said Josephine C. Baker now holds said certificates of stock, so obtained, wrongfully and without right, but says that the same are worthless and of no value as they have been cancelled in obedience to the orders of this Court.

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Paragraph 2.

Answering the petition of the plaintiff herein, petitioner says it is not true that plaintiff has been a citizen of the State of Tennessee all her life; it is not true that Charles Baker, who died on the 1st day of September, 1912, was at the time of his death domiciled in

the state of Tennessee. It is true that in the bill filed by the plaintiff in Hardin County, Tennessee, in the Chancery Court thereof, the plaintiff sought to have dower allotted to her in the lands owned by her husband Charles Baker, deceased, and it is likewise true that she sought to have cancelled deeds made to her by her son, Charles Baker, many years ago; she denies that said Chancery Court of Hardin County, Tennessee, or any other Court in Tennessee, had jurisdiction or authority to determine the rights of Josephine C. Baker in the estate of Charles Baker, deceased; it is true that at the time of the death of Charles Baker, deceased, Baker, Eccles & Company was indebted to him for accumulated dividends and profits accruing upon stock, and for other things in the sum of Eleven Thousand Four Hundred Twenty-nine & 17/100 (\$11,429.17) Dollars, but Charles Baker, deceased, was likewise indebted to Baker, Eccles & Company in the sum of Five Hundred Fourteen & 11/100 (\$514.11) Dollars, which the petitioner paid as she was required to do, and he was likewise indebted to the City of Paducah in the sum of \$— for taxes and penalty, which petitioner paid under judgment of the McCracken County Court; she likewise paid the costs accruing in the action of Mrs. Augusta Baker, administratrix of Charles Baker, deceased, against Mrs. Josephine C. Baker in the McCracken Circuit Court, amounting to \$—. So she says that the net amount in her hands as administratrix at this time amounts to \$—.

160 She denies that the Court of Hardin County, Tennessee, had jurisdiction or authority to decree or order that Josephine C. Baker, as surviving widow of Charles Baker, deceased, was entitled in her own right to all or any of the personal property of said Charles Baker, or to adjudge or determine that she could receive or hold, as her individual property, all or any of said surplus estate after the payment of debts, and it denies that it had jurisdiction or authority or power to direct her to transfer to herself, as widow of Charles Baker, deceased, any of his personal property, and denies that plaintiff now holds any certificates of stock transferred by her as administratrix to herself personally. She says that the Chancery Court of Hardin County, Tennessee, had no jurisdiction over her person, and no jurisdiction of the subject matter of the suit for the settlement of Charles Baker's estate; that said Court had no jurisdiction or power to determine that Charles Baker was at the time of his death a citizen of the state of Tennessee, or domiciled at Savannah, and its judgment and decree in so determining was and is void and of no effect; that said Court had no jurisdiction or authority to determine or decree that said Josephine C. Baker was the sole distributee, or entitled to all the personal estate of which Charles Baker died possessed; that it had no jurisdiction or power to decree or determine that said Josephine C. Baker was individually entitled to any part of the 270 shares of stock held by Charles Baker, at the time of his death, in the Baker, Eccles & Company.

161 She says that at the time the plaintiff, Josephine C. Baker made demand upon Baker, Eccles & Company for the transfer of said 270 shares of stock formerly owned by Charles Baker, de-

ceased, and at the time she made demand upon said Company for the payment to her of money formerly belonging to Charles Baker, deceased, she well knew that the money formerly belonging to the estate of Charles Baker, deceased, was held by her as administratrix and she likewise well knew that the certificates of stock, in the name of Charles Baker, deceased, had been cancelled and reissued one-half to the order of this petitioner, and one-half to the order of Mrs. Josephine C. Baker; that no demand was made of her by said Josephine C. Baker, nor has she communicated with this petitioner in any way relative to the estate of said Charles Baker, deceased, although she has at all times known that the estate of Charles Baker, deceased, was being administered by this petitioner, and the personalty thereof controlled by her absolutely. She denies that the Chancery Court of Hardin County, Tennessee, has jurisdiction either of the subject matter or of the parties to the litigation in the suit filed by Josephine C. Baker against this petitioner, and others mentioned in plaintiff's petition herein; she denies that plaintiff is now, or has ever been, by virtue of any judgment or decree of either the County Court or Chancery Court of Hardin County, Tennessee, or by virtue of any law, Statute or otherwise of the State of Tennessee, the owner or holder of the certificates of stock for 270 shares or any other part, other and further than one half of said 270 shares in the Baker, Eccles & Company. It denies that she is the equitable or real holder of, or entitled to collect, in her own right, any indebtedness of the defendant, Baker, Eccles & Company to the estate of Charles Baker, deceased, with or without interest or accumulation of profits; it denies that in all or any event she is entitled, personally, to collect or receive any property of Charles Baker, deceased, as administratrix of said Charles Baker, or hold any part thereof, in any capacity other than a distributee, and receive 162 from this petitioner, as administratrix of Charles Baker, deceased, or that she is entitled to demand or receive any transfer of any stock certificates from Baker, Eccles & Company, or for the payment of any money from them.

She files herewith as part hereof, marked "B" certified copy of the judgment of the McCracken Circuit Court in the action of Mrs. Augusta H. Baker against Mrs. Josephine C. Baker and others, and asks that the same be read in connection with this her answer and petition.

Wherefore, Mrs. Augusta H. Baker prays that she be made a party defendant to this proceeding, and that this petition be taken as her answer to the petition of Mrs. Josephine C. Baker, individually, and styling her administratrix of Charles Baker, deceased, against Baker, Eccles & Company, and that plaintiff's petition be dismissed, and for her costs in this behalf expended, and for such other and further relief as in law or equity she may be entitled to receive.

WHEELER & HUGHES.

Mrs. Augusta H. Baker says she believes the statements contained in the foregoing petition are true to the best of her knowledge and belief.

Mrs. AUGUSTA H. BAKER.

Subscribed and sworn to before me by Mrs. Augusta H. Baker,
this the 18th day of August, 1913.

[SEAL.]

ROLLIE WILSON,
Notary Public, McCracken County Co., Ky.

Following is Exhibit "A" referred to in the foregoing petition,
viz:

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EXHIBIT "A."

Appointment of Mrs. Augusta H. Baker, Adm'r.

STATE OF KENTUCKY:

McCracken County Court, Regular Term, 27th Day of November,
1912.

Court met pursuant to adjournment, Hon. Jas. M. Lang, Judge
Presiding.

Upon motion of E. W. Baker, and the court being sufficiently
advised, letters of administration are hereby granted to Augusta H.
Baker upon the estate of Chas. Baker deceased; then came the said
Augusta H. Baker and executed bond as such administratrix in the
penal sum of \$35,000.00, with E. W. Baker and C. K. Wheeler, as
sureties thereon, which and sureties are accepted and approved by
the court and the said Augusta H. Baker took the oath prescribed
by law.

Hon. JAS. M. LANG,
Judge McCracken Circuit Court.

Attest:

GUS. G. SINGLETON, Clerk,
By S. MILLER, D. C.

Following is Exhibit "B" referred to in the foregoing petition,
viz:

EXHIBIT "B."

Bond of Mrs. Augusta H. Baker.

Administratrix Bond.

THE COMMONWEALTH OF KENTUCKY:

Whereas, Augusta H. Baker has been appointed Administratrix
of the estate of Charles Baker, now, we Augusta H. Baker princi-
pal, and E. W. Baker and C. K. Wheeler her sureties do hereby
covenant to and with the Commonwealth of Kentucky, in the penal

sum of \$35,000.00 that the said Augusta H. Baker will faithfully discharge all the duties of her trust.

This 27th day of Nov., 1912.

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AUGUSTA H. BAKER.
E. W. BAKER.
CHAS. K. WHEELER.

Attest:

GUS G. SINGLETON,

Clerk of McCracken County Court,

By S. MILLER, D. C.

The affiant states that he is worth in property in this Commonwealth, after the payment of all his debts, the sum of — Dollars.

Subscribed and sworn to before me by — — — this — day of —, 19—.

— — —,
J. M. C. C.

Afterwards, to wit at the September Term, 1913, of the above named Court on the 26th day of September, 1913, the following order was made herein, viz:

On motion of defendant its answer, heretofore filed herein, in vacation and on September 1st, 1913, is now filed of record. On motion of Mrs. Augusta H. Baker, Adm'x of Charles Baker, deceased, her petition heretofore filed in vacation and on the 1st day of Sept., 1913, is now filed of record and she is made party defendant to this proceeding and her said petition is taken as her answer herein.

Afterwards, to wit at the extended September Term, 1913, of the above named Court, on the 15th day of October, 1913, the following order was made herein, viz:

This day came defendant, Augusta H. Baker, Administratrix and offered to file her amended petition, to which the plaintiff objected, and the Court being advised overruled said objection, and ordered said amended petition to be filed, to which the plaintiff excepted. Came plaintiff and filed written objections to the filing of the intervening petition and amended petition of Mrs. Augusta H. Baker, Administratrix and moved the Court to strike said pleadings from the files. Plaintiff offered to file amended petition, to which the defendants objected, and said amended petition was ordered lodged. Plaintiff filed written motion and moved the Court to require defendant, Baker, Eccles & Co., to elect which of the two inconsistent allegations it would rely on. Plaintiff filed written motion and moved the Court to strike from the petition and amended petition of Mrs. Augusta H. Baker, Adm'x, the words set out in said written motion. Pending said motion the plff., filed general demurrer to the petition and amended petition of the said Mrs. Augusta H. Baker, Administratrix, Plaintiff filed written mo-

tion and moved the court to strike from the answer of defendant, Baker, Eccles & Co., the words set out in said written motion and pending said motion plaintiff filed general demurrer to said answer. Came defendant, Baker, Eccles & Co., and defendant, Mrs. Augusta H. Baker, Adm'x and filed written motion and moved the Court to strike from the files herein the exhibits filed with plaintiff's petition.

Amended Petition of Mrs. Augusta H. Baker, Adm'x, to be Made a Party Def't Hereto.

The following is the amended petition of Mrs. Augusta H. Baker, Adm'x, referred to in the foregoing order.

Under leave of Court Mrs. Augusta H. Baker amends her original petition so as to state that in her original petition it is averred that two county courts had passed before she was appointed administratrix of the estate of Charles Baker, deceased, when in fact three county courts had passed, and she desires to correct the allegations of her original petition.

She says that she was never served with a summons or other process, issued in the suit filed by the plaintiff, Mrs. Josephine C.

166 Baker, against her and E. W. Baker and others in the Chancery Court of Hardin County, Tennessee; she did not enter her appearance, in said action, nor did she appear therein in person or by attorney, or by any written pleading. She says that said judgment and all the proceedings in said case, so far as this petitioner is concerned, was and are null and void; she says that she was not present at the time Mrs. Josephine C. Baker was appointed by the County Court of Hardin County, Tennessee administratrix of the estate of Charles Baker, deceased; that she had been served with no summons or notice notifying or advising her that letters of administration would be granted, nor did she know that the said Josephine C. Baker had been appointed administratrix of Charles Baker, deceased, by said Hardin County Court, until long after said appointment was made, and the action and ruling and decree of said Hardin County Court, in granting letters of administration upon the estate of Charles Baker, deceased, and in adjudging and determining said Charles Baker to be a citizen of the State of Tennessee, is, as to this defendant, null and void.

She files herewith, and asks to be read, as a part of her amended petition, a copy of the original petition filed by her in the McCracken Circuit Court in the action of Mrs. Augusta H. Baker, administratrix of Charles Baker, deceased, against Mrs. Josephine C. Baker and Baker, Eccles & Company; she likewise files and asks to be read, as a part of this amended petition, the report of the attorney to defend for Mrs. Josephine C. Baker and a copy of the judgment of the Court rendered in said action. She says that Mrs. Josephine C. Baker, referred to in said action of Mrs. Augusta H. Baker, administratrix of Charles Baker, deceased, in the McCracken Circuit Court, is the Mrs. Josephine C. Baker who is the plaintiff in this action, and the wife of Charles Baker, deceased, which Charles Baker,

167 deceased, referred to in said action of Mrs. Augusta H. Baker, administratrix, was the husband of the plaintiff Mrs. Josephine C. Baker, and the same Charles Baker referred to by the said Mrs. Josephine C. Baker in this action; and the petitioner says that the judgment rendered in said action by the McCracken Circuit Court of Mrs. Augusta H. Baker, administratrix of Charles Baker, deceased, vs. Josephine C. Baker and Baker, Eccles & Company has never been vacated, modified or set aside, nor has any appeal been prosecuted therefrom, and the same is now in full force and effect, and is binding and conclusive upon the said Mrs. Josephine C. Baker, and all other persons interested in or claiming a right to or interest in the estate of Charles Baker, deceased, and she pleads and relies upon the binding force and effect of said judgment against the said Mrs. Josephine C. Baker, both individually and as administratrix of Charles Baker, deceased, under appointment of the Hardin County Court of Tennessee.

Wherefore, she prays as in her original petition, and that she be adjudged and determined the owner of one half of the surplus personalty of the said Charles Baker, deceased, and for her costs in this behalf expended, and for such other and further relief as in law or equity she may be entitled to receive.

WHEELER & HUGHES.

Mrs. Augusta H. Baker says she believes the statements contained in the foregoing amended petition are true.

MRS. AUGUSTA H. BAKER.

Subscribed and sworn to before me by Mrs. Augusta H. Baker, this the 14th day of October, 1913.

[SEAL.]

ROLLIE WILSON,

Notary Public, McCracken Co., Ky.

168 *Written Objection to Filing Petition of Mrs. Augusta H. Baker, Adm'x, &c., to be Made Party Def't.*

The following is the written objections to the filing of the petition of Mrs. Augusta H. Baker, Adm'x &c. to be made a party defendant hereto, referred to in the foregoing order, viz:

The plaintiff, Josephine C. Baker, individually and as administratrix of Charles Baker, deceased, objects to the filing of the Petition and Amended Petition of Mrs. Augusta H. Baker, Administratrix of Charles Baker, deceased, asking to be made a party defendant in this action, and here moves the Court to strike said Petition and Amended Petition from the file and not permit same to be filed, because she states that the said Mrs. Augusta H. Baker, administratrix etc., is not a necessary party to the proper determination of any controversy between this Plaintiff and the Defendant, Baker, Eccles & Company, and upon this objection and motion, the Plaintiff prays for the judgment of this Honorable Court.

ROSS & ROSS,

JOHN A. PITTS, AND

C. C. GRASSHAM,

Attorneys for Plaintiff.

The following is the motion of Plaintiff to require Defendant, Baker, Eccles & Company, to elect which of the two inconsistent allegations it would rely on, referred to in the foregoing order, viz:

169 *Written Motion of Plaintiff to Require Defendant Baker, Eccles & Co. to Elect Which of the Two Inconsistent Allegations It Would Rely on.*

The Plaintiff, Josephine C. Baker, individually and as administratrix of Charles Baker, deceased, moves the Court to require Defendant, Baker, Eccles & Company, to elect which one of the two inconsistent pleas and allegations relied on it will prosecute; that is, whether it will rely on the allegation set forth in Paragraph 1 of its answer, in words and figures as follows, to-wit:

"That all of the stock standing in the name of Charles Baker, deceased, had been transferred to other persons in obedience to a judgment of the Circuit Court of McCracken County, Kentucky, as will more fully hereinafter appear; that all of the money belonging to the estate of Charles Baker at the time of said demand had in obedience to the orders of the McCracken Circuit Court, been delivered by Defendant to Mrs. Augusta H. Baker, Administratrix of the estate of Charles Baker,"

or the allegation set forth in Paragraph 2 of its answer, which is in words and figures as follows, to-wit:

"That after the appointment of said administratrix she caused the estate of Charles Baker, deceased, to be appraised and the money and personal property belonging to said Charles Baker, deceased, held by Defendant, was in obedience to the demand of said Administratrix, delivered to her and she yet holds and controls the same",

and upon this motion Plaintiff asks the judgment of this Honorable Court.

ROSS & ROSS,
JOHN A. PITTS, AND
C. C. GRASSHAM,
Attorneys for Plaintiff.

170 *Written Motion of Plaintiff to Strike from Petition and Amended Petition of Mrs. Augusta H. Baker, Adm'x, the Words Set Out in Said Motion.*

The following is the written motion of Plaintiff to strike from Petition and Amended Petition of Mrs. Augusta H. Baker, Adm'x, the words set out in said written motion, referred to in the foregoing order, viz:

The Plaintiff, Josephine C. Baker, individually and as administratrix of Charles Baker, deceased, moves the Court to strike from the Petition of Mrs. Augusta H. Baker, Administratrix of Charles

Baker, deceased, to be made a party, defendant hereto and from her amended Petition therefor, all of Paragraph 1 and all of Paragraph 2 of said Petition and all of said Amended Petition, because the matter contained in each of said paragraphs is irrelevant and redundant and upon this motion the Plaintiff prays the judgment of this Honorable Court.

ROSS & ROSS,
JOHN A. PITTS, AND
C. C. GRASSHAM,
Attorneys for Plaintiff.

*General Demurrer of Pl'ff to Petition and Amended Petition of
Mrs. Augusta H. Baker, Adm'x, to be Made Party Def't.*

The following is the general demurrer to petition and amended petition of Mrs. Augusta H. Baker, Adm'x, referred to in the foregoing order, viz:

The plaintiff, Josephine C. Baker, individually and as Administratrix of Charles Baker, deceased, demurs generally to the Petition and Amended Petition of Mrs. Augusta H. Baker, Administratrix of Charles Baker, to be made a party defendant hereto, and to Paragraph 1 and Paragraph 2 thereof respectively, because said Petition as a whole, nor either paragraph thereof, does not state facts or any facts sufficient to support, constitute or maintain an action or defense herein, and upon this demurrer Plaintiff asks the judgment of this Honorable Court.

ROSS & ROSS,
JOHN A. PITTS, AND
C. C. GRASSHAM,
Att'ys for Plaintiff.

171 The following is the written motion of Plaintiff to strike from the answer of Defendant, Baker, Eccles & Company, the words set out in said written motion, referred to in the foregoing order, viz:

The plaintiff, Josephine C. Baker, individually and as administratrix of Charles Baker, deceased, moves the Court to strike from Paragraph 1 of the Defendant's Baker, Eccles & Company, Answer, the following words and figures, to-wit:

"The Defendant, Baker, Eccles & Company, for answer to Plaintiff's Petition, says it is untrue and it denies that Plaintiff has been all her life a citizen of the State of Tennessee, though she may be a citizen now of said State. It denies that Charles Baker died while a resident or while domiciled in the State of Tennessee; it denies that the County Court of Hardin County, Tennessee, had jurisdiction or authority to appoint Joesphine C. Baker Administratrix of the estate of Charles Baker, deceased, at its November term, 1912 or on the 25th day of November, 1912, or at any other time; and it denies that she was duly appointed such administratrix by said Court at any time; it denies that the estate of Charles Baker was rightfully or

could be distributed or settled in accordance with the laws of the State of Tennessee, because Defendant says that said Charles Baker was at the time of his death and had been for many years prior thereto, a citizen and resident and domiciled in Paducah, McCracken County, Kentucky."

Also the following words and figures, to-wit:

"Defendant says that at the time of the demand for the transfer of said stock in the name of Charles Baker, deceased, at the time of his death, no certificates of stocks or stubs therefor appeared upon its books as belonging to Charles Baker, deceased; that all of
172 the stock standing in the name of Charles Baker, deceased, had been transferred to other persons in obedience to a judgment of the Circuit Court of McCracken County, Kentucky, as will more fully hereafter appear; that all of the money belonging to the estate of Charles Baker at the time of said demand had in obedience to the orders of the said McCracken Circuit Court, been delivered by Defendant to Mrs. Augusta H. Baker, administratrix of the estate of Charles Baker, as will more fully hereafter appear."

Also the further words and figures as follows, to-wit:

"It is not true and it denies that the County Court of Hardin County, Tennessee, had full jurisdiction of the personal estate of Charles Baker, deceased; it denies that the proceedings therein were regular or in accordance with the law of said State; it denies that the Chancery Court of Hardin County, Tennessee, had jurisdiction either of the subject matter or of this Defendant or the proceedings therein were regular or binding or of any effect so far as this Defendant is concerned, for Defendant says it was never served with process in said proceedings nor notified by the service of summons, nor did it enter its appearance to said proceedings in said Chancery Court. It denies that Plaintiff is now or ever has been as matter of fact or as matter of law, or by virtue of any judgment or decree of any County Court of Chancery Court of Hardin County, Tennessee, or by virtue of any Statute or other law of the State of Tennessee, the owner or holder of the certificates of stock for 270 shares or any number of
173 shares in this corporation other or further than one half of said 270 shares, or that she is either the equitable, legal or real owner or entitled to collect in her own or any right, any indebtedness of the Defendant to the estate of her deceased husband, Charles Baker, with or without interest, accumulations or profits. It denies that she is entitled to receive or collect for herself, as administratrix or in any representative capacity, any of said certificates of stock or any amount of money or other personal property from this defendant."

And from Paragraph 2 of said Answer, all of said Paragraph and the words and figures thereof, beginning with the first word therein, to-wit, "Defendants" and ending with the word "order" just last before the prayer of said Answer, inclusive, because the words and figures above quoted and referred to and the allegations embraced therein, are irrelevant and redundant matter and should not be embraced in said Answer.

Upon this motion Plaintiff asks judgment of this Honorable Court.

ROSS & ROSS,
JOHN A. PITTS AND
C. C. GRASSHAM,
Attorneys for Plaintiff.

The following is the General Demurrer of Plaintiff to Answer of Defendant, Baker, Eccles & Company, referred to in the foregoing order, viz:

The Plaintiff, Josephine C. Baker, individually and as administratrix of Charles Baker, deceased, demurs generally to the Answer of Baker, Eccles & Company filed herein, and to Paragraphs 1 and 2 respectively thereof, because said Answer as a whole, nor either of said paragraphs, state facts or any fact sufficient to constitute or support a defense herein, and upon this Demurrer Plaintiff prays the judgment of this Honorable Court.

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ROSS & ROSS,
JOHN A. PITTS AND
C. C. GRASSHAM,
Attorneys for Plaintiff.

The following is the written motion of Defendants, Baker, Eccles & Company and Mrs. Augusta H. Baker, Administratrix, to strike from files the exhibits filed with Plaintiff's Petition, referred to in the foregoing order, viz:

The defendants ask the Court to strike from the files the exhibits attached to and filed with plaintiff's petition, because they say said exhibits are irrelevant and of no probative force, and cannot be properly considered as evidence in this action.

WHEELER & HUGHES.

Afterwards, to wit at the October Term, 1913, of the above named Court on the 27th day of October, 1913, the following order was made herein, viz:

The motion of plaintiff, heretofore filed to require defendant, Baker, Eccles & Co. to elect which of the two inconsistent allegations it will rely upon, is upon the Court being advised overruled, to which the plaintiff excepted. The general demurrer, heretofore filed by the plaintiff to the answer of def't, Baker, Eccles & Co., is upon the Court being advised overruled, to which the plaintiff excepted. The motion to strike certain words from the answer of def't Baker, Eccles & Co., as set out in said written motion, filed by the plaintiff, is upon the Court being advised overruled, to which the plaintiff excepted. Came the plaintiff and moved the Court to strike from the files the petition and amended petition of Mrs. Augusta H.

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Baker, Adm'x, for the reasons set out in said written motion, and the Court being advised overruled said motion, to which the plaintiff excepted. The general demurrer of plaintiff, heretofore filed to the petition and amended petition of Mrs. Augusta H. Baker, Adm'x is upon the Court being advised overruled, to which

the plaintiff excepted. The motion of plaintiff heretofore filed to strike paragraphs Nos. 1 & 2 of the petition of Mrs. Augusta H. Baker, Adm'x, and all of the amended petition, is upon the Court being advised overruled, to which the plaintiff excepted. Came def't, Mrs. Augusta H. Baker, Adm'x and offered to file second amended intervening petition, to which the plaintiff objected and the Court being advised overruled said objection and ordered the said second amended intervening petition to be filed, to which the plaintiff excepted. Came plaintiff and filed general demurrer to second amended intervening petition of Mrs. Augusta H. Baker, Adm'x, and the Court being advised overruled said demurrer, to which the plaintiff excepted. By agreement of parties the affirmative allegations contained in the first amended intervening petition and the second amended intervening petition of defendant, Mrs. Augusta H. Baker, Adm'x, are controverted of record by the plaintiff. Plaintiff moved the court to file her amended petition heretofore offered and lodged, to which the def'ts objected and the Court being advised overruled said objection and ordered said amended petition to be filed, to which the def'ts excepted. Plaintiff offered to file amended petition No. 2, to which the def'ts objected, and the Court being advised overruled said objection and ordered said amended petition No. 2 to be filed, to which the def'ts excepted. Came the plaintiff and filed reply to the answer of def't, Baker, Eccles & Co. Plaintiff also filed answer to the petition of Mrs. Augusta H. Baker, Adm'x.

176 The following is the amended intervening petition of Mrs. Augusta H. Baker, Adm'x, &c. referred to in the foregoing order, viz:

Mrs. Augusta H. Baker, administratrix of Charles Baker, deceased, amends her intervening petition herein, so as to state:

That the order of appointment of Mrs. Josie C. Baker as administratrix of the estate of Charles Baker, deceased, made by the County Court of Hardin County, Tennessee, at its November 1912 Term, and on the 25th day of November, 1912, was obtained by the fraud and wrongful act of the said Mrs. Josie C. Baker; and the decree of the Chancery Court of Hardin County, Tennessee, rendered at the April Term 1913 in the action of Josie C. Baker, administratrix and personally against E. W. Baker, et al., was likewise obtained by the fraud of the said Mrs. Josie C. Baker and by her wrongful act, for the said Mrs. Augusta H. Baker states that the said Charles Baker, for twelve years prior to his death resided in and was a citizen of McCracken County, Kentucky; that the said Mrs. Josie C. Baker, wife of Charles Baker, likewise for twelve years prior to the death of said Charles Baker, resided with said Charles Baker in said County and State, and that both she and the said Charles Baker were, at the time of the death of said Charles Baker, on the first of September, 1912, citizens of and residents of McCracken County, Kentucky; that some time after the death of the said Charles Baker, the said Mrs. Josie C. Baker, for the fraudulent purpose and with the design and intent of procuring her own appointment as administratrix of the estate of Charles Baker, under the laws of the State of Tennessee, removed from McCracken County, Kentucky, to Savannah, Ten-

nessee in Hardin County, and some time thereafter, she, for the fraudulent purpose of procuring her appointment as administratrix of the estate of said Charles Baker, represented and pretended to the said County Court of Hardin County, Tennessee, that Charles Baker was a citizen of the State of Tennessee at the time of his death; and intending to defraud and cheat this petitioner of her distributive right in the estate of Charles Baker, the said Mrs. Josie C. Baker fraudulently and wickedly represented and pretended to said County Court that said Charles Baker was a citizen of Tennessee at the time of his death, and by such false and fraudulent representations induced and procured said County Court of Hardin County, Tennessee, to make an order on said 25th day of November 1912, appointing her as administratrix of the estate of said Charles Baker, deceased; and still, further, intending and designing to cheat and defraud this petitioner of her distributive right in the estate of said Charles Baker, deceased, the said Mrs. Josie C. Baker, still acting under her original purpose to fraudulently obtain a judgment and decree of the Courts of Tennessee adjudging and determining that said Charles Baker, deceased, was a citizen of the State of Tennessee at the time of his death, she did on the 28th day of December, 1912, file in the Chancery Court of Hardin County, Tennessee, a bill, wherein the said Mrs. Josie C. Baker falsely and fraudulently charged that the said Charles Baker, deceased, was a citizen of the State of Tennessee at the time of his death.

She says that the said Mrs. Josie C. Baker knew at the time she procured and obtained from the Court Court of Hardin County, Tennessee, the appointment as administratrix of Charles Baker, deceased, that said Charles Baker did not die a citizen of the State of Tennessee; and she likewise knew at the time she filed bill in the Chancery Court of Hardin County, Tennessee, wherein she charged that said Charles Baker, deceased, died intestate in said State on the first day of September, 1912, that said Charles Baker was not a citizen of the State of Tennessee at the time of his death, and that he did not die intestate in said State on said date; but she falsely and purposely alleged in said petition that said Charles Baker was a citizen of the State of Tennessee at the time of his death, with the design, intent and purpose of cheating this petitioner of her distributive right in the estate of Charles Baker, deceased, because she says that said Mrs. Josie C. Baker knew at the time she procured her appointment as administratrix of the estate of Charles Baker, deceased, from the County Court of Hardin County, Tennessee, and at the time she filed said petition in the Chancery Court, that, under the laws of the State of Kentucky, the said Charles Baker having died intestate in said State, leaving no children, nor father surviving, that this petition-, as his mother, was entitled to one-half of the surplus personalty of said decedent, and that said Mrs. Josie C. Baker, for the purpose of defrauding this petitioner of her distributive right of one half of the surplus personalty of said Charles Baker, falsely stated in said bill in said Chancery Court that said Charles Baker died a citizen of the State of Tennessee, and she did further, for said fraudulent purpose and design of cheating

this petitioner, by false and incompetent evidence and by her own untruthful allegations, procured and induced said Chancery Court of Hardin County, Tennessee, to adjudge and determine at its April Term 1913, that the said Charles Baker was a citizen of the State of Tennessee at the time of his death. So the petitioner says that said decree was obtained by fraud by the said Mrs. Josie C. Baker, and is and was null and void as to her; that the said Charles Baker never was a citizen of the State of Tennessee for many years prior to his death, all of which facts were known to the said Mrs. Josie C. Baker, but which facts she suppressed and concealed from the County Court of Hardin and from the Chancery Court of said County for the purpose and design of cheating and defrauding this petitioner of her rights in the estate of said Charles Baker, deceased.

Wherefore, Mrs. Augusta H. Baker, prays that the judgment of the County Court of Hardin County, Tennessee, appointing Mrs. Josie C. Baker administratrix of the estate of Charles Baker, deceased, and the judgment of the Chancery Court of Hardin County, Tennessee, adjudging and determining that Charles Baker was a citizen of the State of Tennessee be held for naught and ignored, and that she be adjudged entitled to one half of the surplus personal property of the estate of Charles Baker, and as in her original petition, and for all general and equitable relief.

MRS. AUGUSTA H. BAKER.

Subscribed and sworn to before me by Mrs. Augusta H. Baker, this the 25th day of October, 1913.

ROLLIE WILSON,
Notary Public, McCracken Co., Ky.

The following is the general demurrer of plaintiff to second amended intervening petition of Mrs. Augusta H. Baker, Adm'x, referred to in the foregoing order, viz:

Comes Plaintiff and demurs generally to the Amended Intervening Petition of Mrs. Augusta H. Baker, Administratrix of Charles Baker, Deceased, filed herein, and to the Petition of Intervener as thus amended, because neither said Amended Intervening Petition aforesaid, nor said Petition of Intervener as amended state any facts or fact sufficient to constitute or support a cause of action or defense in this proceeding, and on this she asks the judgment of this Court.

ROSS & ROSS,
JOHN A. PITTS, AND
C. C. GRASSHAM,
Attorneys for Plaintiff.

The following is the amended petition referred to in the foregoing order, viz:

The plaintiff, on leave of the court first had and obtained, by way of amendment to her original petition herein, heretofore filed, respectfully states and shows:

That under and by the laws of the State of Tennessee, the several County Courts of the State, including the County Court of Hardin County, are, and have been since their establishment more than one hundred years ago, courts of record, with a presiding Judge or Justice, clerk and seal, and having general original probate jurisdiction, including power and authority over the appointment of administrators and executors and the settlement and distribution to those entitled, of the estates of deceased persons—such jurisdiction being declared by section 6027, subsections 1, 2, 3, 4 and 5 of Shannon's Code of Tennessee, which are as follows:

"6027. The County Court has original jurisdiction in the following cases:

- (1) The probate of wills.
- (2) The granting of letters testamentary and of administration, and the repeal and revocation thereof.
- (3) All controversies in relation to the right of executorships or of administration.
- (4) The settlement of accounts of executors or administrators.

181 (5) The partition and distribution of the estates of decedents; and for these purposes, the power to sell the real and personal property belonging to such estates, if necessary to make the partition and distribution, or if manifestly for the interest of the parties.

That by the laws of said State, the widow of a deceased husband dying intestate is entitled to be appointed, over all others, administrator upon his estate—this right being declared by section 3939 of Shannon's Code of 1896, which is as follows:

"When any person shall die intestate in this State, administration shall be granted to the widow of such person if she make application for the same. For want of such application on the part of the widow, the administration shall be granted to the next of kin, if such next of kin apply therefor. If neither the widow nor next of kin make application for administration, then the same shall be granted to the largest creditor proving his debt on oath before the County Court or Judge; Provided, that when there is more than one next of kin, the County Court may decide which of them shall be entitled to administration."

That by the laws of said State the granting of administration upon the estates of persons dying when resident in the State is regulated, as appears by section 3934 of Shannon's Code of 1896, as follows:

"Letters of administration shall be granted by the County Court of the county where the intestate had his usual residence at the time of his death; or, in case he has fixed places of residence in more than one county, the County Court of either county, may grant letters of administration upon his estate."

And the granting of administration upon the estates of non-residents is regulated by the laws of said State of Tennessee, as shown by section 3935 of said Shannon's Code, of 1896, as follows:

182 "Letters testamentary or of administration may be granted upon the estate of a person who resided, at the time of his

death, in some other state or territory of the Union, or in a foreign country, by the County Court of any county in this State;

(1) Where the deceased had any goods, chattels, or assets, or any estate, real or personal, at the time of his death, or where the same may be when said letters are applied for.

(2) Where any debtor of the deceased resides.

(3) Where any debtor of a debtor of the deceased resides, his debt being unpaid when the application is made.

(4) Where any suit is to be brought, prosecuted, or defended, in which said estate is interested".

And, construing and applying these statutes, it has been uniformly held by the highest Court in said State of Tennessee that administration granted under any of said statutes, is a general administration, for all purposes, and that special, ancillary, or limited administrations are unknown to the laws of said State of Tennessee. The Supreme Court of said State so held in the case of Robert D. Carr vs. W. Lowe's Executors, reported in Vol. 7 of Heiskell's Reports, page 84—the 3rd, and 4th. head notes, properly stating the holding of the Court, being as follows:

"The County Court undertook to appoint W. L. special administrator of R. D. C., who died domiciled in Arkansas, 'to collect the uncollected debts, etc., and pay over to Mrs. E. C., the executrix in Arkansas, with no powers or liabilities beyond those specified, etc., except that he retain for any amount due', etc.

183 Afterwards the administrator made a settlement with the Arkansas executrix, which was approved by the County Court. Held, that the appointment of the County Court created an administration with all the powers and liabilities attaching to the office under the laws relating thereto, and that the County Court had no power to prescribe limitations to these powers or liabilities, or to determine in advance to whom the administrator should make payment, and this its order, and subsequent approval of the settlement made, did not protect the administrator against the account asked by the distributees.

4. The transfer of the surplus assets here into the hands of the representative of the domicile, for distribution there, is discretionary with the proper tribunal here, upon a bill filed for that purpose making proper parties".

That all the statutes and the decision herein above referred to were in force and the law of the State of Tennessee at the time of the death of petitioner's husband, Charles Baker, and her appointment and qualification as his administratrix, as alleged in her original petition herein; that her said appointment and qualification, and all the proceedings thereunder, in said County Court of Hardin County, were regular and in accordance with the laws of said State of Tennessee, and said County Court had and exercised therein full jurisdiction, both of the person and subject matter, under and by virtue of the laws of the said State of Tennessee. A full, true and perfect transcript of the proceedings of the said County Court of Hardin County in the said matter of her administration upon the

estate of Charles Baker, deceased, duly certified in accordance
184 with the Act of the Congress of the United States and the laws of both the States of Tennessee and Kentucky, is herewith filed and made part hereof, marked "Exhibit B".

Plaintiff also exhibits hereto and makes part hereof, marked "Exhibit C," a full, true and correct copy of the local rules of practice of the Chancery Court of Hardin County, Tennessee, authorized by the laws of said State, and having, by virtue of said laws, the force of legal rules of practice of said Court, duly certified in accordance with the Act of Congress and the laws of Tennessee and Kentucky; and plaintiff avers that her said cause in said Chancery Court, mentioned in her original petition, was conducted in strict accordance with said rules and the laws of the State of Tennessee, and that in the said State of Tennessee the said proceedings and the orders and decrees therein are given, and are entitled to, full faith and credit, and are treated as conclusive until reversed on appeal, or directly attacked and set aside for fraud, or opened for re-examination on the merits in said court on petition or application by a party interested, in the manner provided by the laws of said State, and cannot be assailed collaterally by any one.

Plaintiff prays for the same relief asked in her original petition.

C. C. GRASSHAM,
ROSS & ROSS,
PITTS & McCONNICO,
Attorneys for Plaintiff.

The affiant, Josie C. Baker, plaintiff, states that the allegations contained in the foregoing petition are, as she believes, true.

JOSIE C. BAKER.

185 Subscribed and sworn to before me by Josie C. Baker, this the 4th. day of Oct., 1913. My Commission as Notary Public will expire on the 11 day of July 1914.

A. J. WILLIAMS,
Notary Public.

The following is Exhibit "B" referred to in the foregoing Amended Petition.

STATE OF TENNESSEE,
Hardin County:

Be it remembered that the Monthly County Court for said County and State was begun and held at the Court house in the town of Savannah, Tennessee on the first Monday in November, 1912, the same being Nov. 4, 1912, present and presiding the Hon. W. P. Story, County Judge, L. L. Harbert, Clerk and J. A. Spencer, Sheriff, present, when court was opened in due form of law and the following proceedings were had and entered of record on the Minutes of this Court.

MONDAY, November 25th, 1912.

In the Matter of the Estate of CHARLES BAKER, Deceased.

Order Appointing Administratrix.

Be it remembered that at the November Term of the County Court of Hardin County, Tennessee, on this, the 25th. day of November 1912, before Honorable W. P. Story, County Judge of said County, it duly appearing to the Court that Charlie Baker died intestate on the 1st day of September, 1912, and it further duly appearing that at the time of his death the residence of the said Charlie Baker was in Hardin County, Tennessee, and that he left therein estate, goods and chattels, rights and credits, the granting of the administration where-belongs to this Court; and Mrs. Josie C. Baker, the widow of the said Charlie Baker, deceased, having applied for letters of 186 administration on his estate, and she having a right thereto under the laws of the State of Tennessee, and the Court being satisfied of her right to so administer; it is therefore ordered and decreed by the Court that said application made by the said Mrs. Josie C. Baker for the granting of letters of administration on said estate to her be granted upon administration bond with sufficient security being given in the penal sum of Seventy Thousand Dollars, and upon the oath prescribed by law being taken by the said Mrs. Josie C. Baker; and the said Mrs. Josie C. Baker having this day duly executed said bond in said sum of \$70,000.00, payable and conditioned as prescribed by statute, with E. K. Churchwell, Caledonia Churchwell, Arch Walker and J. J. Williams as sureties, the same is duly approved and accepted by the Court, and she having taken an oath for the faithful performance of her duty as such administratrix, it is therefore ordered, adjudged and decreed by the Court that the said Mrs. Josie C. Baker be, and she is hereby appointed administratrix of the estate of the said Charlie Baker, dec'd, and letters of administration will issue accordingly.

Bond.

STATE OF TENNESSEE,

Hardin County:

We, Josie C. Baker, principal, E. K. Churchwell, Caledonia Churchwell, Arch Walker and J. J. Williams, sureties, are bound to the State of Tennessee in the penalty of Seventy Thousand Dollars.

Witness our hands and seals, this 25th. day of November, A. D. 1912.

187 The condition of the obligation is such, that, whereas, the above bound Josie C. Baker has been appointed administratrix of the estate of Charlie Baker, deceased.

Now if the said Josie C. Baker shall well and truly, as such administratrix perform all the duties which are or may be required by law, and shall faithfully discharge all the duties imposed upon her by law, under Chapter 174, Acts of General Assembly of said State

1893, and shall pay over the collateral inheritance tax as therein provided, this obligation shall be void; otherwise to remain in full force and virtue.

JOSIE C. BAKER.	[SEAL.]
E. K. CHURCHWELL.	[SEAL.]
CALEDONIA CHURCHWELL.	[SEAL.]
ARCH WALKER.	[SEAL.]
J. J. WILLIAMS.	[SEAL.]

Acknowledged and approved in open court this 25th day of Nov. 1912.

W. P. STORY, *Judge.*

Letters of Administration.

STATE OF TENNESSEE,
Hardin County:

To Josie C. Baker, a Citizen of Hardin County:

Whereas, it appears to the Court, now in session, that Charlie Baker has died, leaving no will, and the Court being satisfied as to your claim to the administration, and you having given bond and qualified as directed by law, and the Court having ordered that Letters of Administration be issued to you: These are, therefore, to authorize and empower you, the said Josie C. Baker, to take into your possession and control all the goods, chattels, claims and papers of the said intestate, and return a true and perfect inventory thereof to our next County Court, or within ninety days from the date thereof; to collect and pay all debts, and to do and transact all the duties in relation to said estate which lawfully devolve on you as Administratrix; and after having settled up said estate, to deliver the residue thereof to those who have a right thereto by law. Herein fail not.

Witness L. L. Harbert Clerk of said Court, at office, this 25th day of November, 1912, and the 137 year of American Independence.

L. L. HARBERT, *Clerk.*

Inventory.

To the Honorable W. P. Story, County Judge of Hardin County, Tennessee:

The undersigned, Mrs. Josie C. Baker, as administratrix of Charlie Baker, deceased, hereby returns an inventory of the personal property belonging to the estate of the said Charlie Baker, deceased, that has come to her hands as such administratrix:

Certificates of stock in the corporation of Baker, Eccles & Company, of Paducah, Kentucky, which certificates of stock are now in the possession and control of the administratrix at Savannah, Tennessee, and are held by her as such administratrix, as follows, to-wit:

Certificate No. 11, for 50 shares, \$100.00 each.....	\$5,000.00
Certificate No. 12, " 50 shares, \$100.00 each.....	5,000.00
Certificate No. 13, " 50 shares, \$100.00 each.....	5,000.00
Certificate No. 14, " 50 shares, \$100.00 each.....	5,000.00
Certificate No. 15, " 30 shares, \$100.00 each.....	3,000.00
Certificate No. 19, " 10 shares, \$100.00 each.....	1,000.00
Certificate No. 21, " 30 shares, \$100.00 each.....	3,000.00
Total.....	27,000.00

189 There is also an amount of undivided profits on said certificate of stock, the exact amount of which and just what is due on said certificates cannot at this time be accurately given by the administratrix.

An account against R. M. Goslee for \$50.00, which has been paid to the administratrix.

Cash, \$19.25.

One Gold Plated Watch.

There will also be a certain amount of rents for the year 1912 due the estate, but the amount of the same cannot now be stated. Said rents to arise from real estate farming lands situated in Hardin County, Tennessee.

STATE OF TENNESSEE,
Hardin County:

Personally appeared before me, L. L. Harbert, County Court Clerk, of Hardin County, Tennessee, Mrs. Josie C. Baker, administratrix of the estate of Charlie Baker, deceased, who made oath in due form of law that the foregoing inventory of the estate of the said Charlie Baker, deceased, is true and is a full and complete list and inventory of all of the personal property belonging to said estate, and which shows all of the same that has come to her hands to the best of her knowledge, information and belief.

JOSIE C. BAKER.

Sworn to and subscribed before me, this the 25th day of November, 1912.

L. L. HARBERT, *Clerk.*

Order to Record Inventory.

In the Matter of the Estate of CHARLIE BAKER, Deceased.

190 In this matter the Clerk this day presented to the Court the Inventory of the estate of Charlie Baker, deceased, returned by Mrs. Josie C. Baker, administratrix of said estate, and there being no exceptions to said inventory, and the same appearing to be in all respects regular, the Clerk will therefore record the same in the Book of Inventories of this Court.

STATE OF TENNESSEE,
Hardin County:

Be it remembered that the Monthly County Court for said County and State, was begun and held at the Court house in the town of Savannah, Tennessee, on the first Monday in December, 1912, the same being December 2nd, 1912, present and presiding the Honorable W. P. Story, County Judge of said County, L. L. Harbert, County Court Clerk of said County, and J. A. Spencer of said County of Hardin, present, when Court was opened in due form of law and the following proceedings were had and entered of record on the minutes of said court, to wit:

Decree Confirming Settlement.

In the Matter of the Estate of CHARLEY BAKER, Deceased.

Be it remembered that on this, the 2nd day of December, 1912, being the December, 1912, Term of the County Court of Hardin County, Tennessee, before Honorable W. P. Story, County Judge of said County, the Clerk of said Court this day presented to the Court his report of settlement and account with Mrs. Josie C. Baker as the administratrix of Charley Baker, deceased, and said report appearing to be in all respects regular, and there being no exceptions thereto, the same is in all things confirmed by the court, and the Clerk of this Court will enter the same in the Book of Administrator's settlements.

It further appearing to the Court from proof introduced to and heard by the Court, that the said Charley Baker died intestate, and at the time of his death he was a resident of Hardin County, Tennessee, that he left no children or descendants of such surviving, but left surviving his widow, the said Mrs. Josie C. Baker, and under the laws of the State of Tennessee, the said Mrs. Josie C. Baker, as the widow of the deceased, is entitled to all of the surplus personal property of the estate, and the Court being of opinion that she is entitled to receive and hold as her own individual property all of the surplus personalty of the estate after payment of the debts of the same, and the expenses of the administration, so adjudges and decrees.

It is therefore ordered, adjudged and decreed by the Court that the said Mrs. Josie C. Baker, as the administratrix of the said Charley Baker, dec'd, transfer to herself, individually, as the widow of the said Charley Baker, dec'd, and as the person entitled thereto, all of said surplus personalty of the estate of her deceased husband, including the Two Hundred and Seventy Shares of the capital stock of the corporation of Baker, Eccles & Co., of Paducah, Kentucky, reported by her in her inventory as assets of said estate, and which are accounted for by her on settlement of said estate, as follows, to wit:

50 shares \$100.00 each, certificate	No. 11.....	\$5,000.00
50 shares \$100.00 each, certificate	No. 12.....	\$5,000.00
50 shares \$100.00 " "	No. 13.....	\$5,000.00
50 shares \$100.00 " "	No. 14.....	5,000.00
30 shares \$100.00 " "	No. 15.....	3,000.00
10 shares \$100.00 " "	No. 19.....	1,000.00
30 shares \$100.00 " "	No. 21.....	3,000.00
Total.....		\$27,000.00

It is further ordered, adjudged and decreed by the Court that the said Mrs. Josie C. Baker, as the widow of the said Charley Baker, deceased, is entitled to all accrued profits on said stock and
 192 to all of the other personalty remaining in her hands as administratrix of said estate.

Settlement.

To the Honorable W. P. Story, County Judge of Hardin County, Tennessee:

The undersigned Clerk respectfully states to the Court that he has this day taken a trial account with Mrs. Josie C. Baker, as the Administratrix of her deceased husband, Charley Baker, and states the same as follows, to wit:

The administratrix is charged with the following property which has come to her hands as the administratrix of said estate, to wit:

270 shares of stock in the corporation of Baker, Eccles & Co., of Paducah, Kentucky, evidenced by the following certificates of stock issued by said corporation for said 270 shares now in the hands of the administratrix, as follows, to wit:

50 shares \$100.00 each, certificate	No. 11.....	\$5,000.00
50 shares, \$100.00 " "	No. 12.....	5,000.00
50 shares, \$100.00 " "	No. 13.....	5,000.00
50 shares, \$100.00 " "	No. 14.....	5,000.00
30 shares \$100.00 " "	No. 15.....	3,000.00
10 shares \$100.00 " "	No. 19.....	1,000.00
30 shares \$100.00 " "	No. 21.....	3,000.00
Total.....		\$27,000.00

The amount due on said shares of stock as earned profits not at this time accurately known.

Account against R. M. Goslee.....	50.00
Cash.....	19.23

1 Gold Plated Watch, now in the hands of administratrix.

Rents of farm in Hardin County for 1912 not collected.

The Administratrix is credited with the following disbursements made by her as such:

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Sept. 18, 1912.	By amount paid Joe Duncan for casket for deceased	\$37.00
	By Amt. pd. R. L. Sebrey, exps. bringing deceased to Savannah.....	28.50
	By amt. pd. R. B. Guinn hacks and buggies at funeral.....	12.75
	By other expenses pd. Dick Weller.....	1.50

The above were paid by E. P. Churchwell & Son for the administratrix, and the account paid to E. P. Churchwell & Son, including an item for one trunk, of July 20, 1911—\$17.60, making a total of \$97.35, to E. P. Churchwell & Son, in full of their account.

Dec. 2, '12.	By account to Walker & Williams, exps. Digging grave of deceased.....	\$5.00
Dec. 2, '12.	" Acct. of Baker Bros. ½ due by dec'd to E. P. Churchwell & Son, for repairs for farm	31.79
Dec. 2, '12.	" Acct. pd. Kentucky Auto & Machine Co.	10.65
Nov. 25, '12.	" Amt. pd. Clerk letters of Administ'n....	3.00
Dec. 2, '12.	" " " " recording inventory order on same and certified copy of order appointment and inventory.....	1.75
	" " pd. Clerk this settlement.....	3.80

Total disbursements.....

It appearing that the deceased was a resident of Hardin County, Tennessee, at the time of his death, that he died leaving no children surviving, but left surviving his widow, the administratrix, and under the laws of Tennessee she is entitled to all of the surplus personalty of the estate, Mrs. Josie Baker is therefore entitled to retain as the widow all of said personalty in her hands as administratrix, and executed as such widow a receipt for the same, as follows,

194 and asks that said receipt be copied in full on the Minutes, to wit:

Received of Josie C. Baker as administratrix of the estate of Charley Baker, deceased, 270 shares of the capital stock of the corporation of Baker, Eccles & Co., of Paducah, Ky., owned by my husband, Charley Baker, dec'd, and for which certificates of stock were issued to him by said corporation, and which certificates are in my hands as the administratrix of his estate, and which are hereby transferred to and taken in charge by me on settlement of his said estate, as the widow, and entitled to the same under the laws of the State of Tennessee, as follows, to wit:

50 shares, \$100.00 each, certificate	No. 11.....	\$5,000.00
50 shares, \$100.00 " "	No. 12.....	5,000.00
50 shares, \$100.00 " "	No. 13.....	5,000.00
50 shares, \$100.00 " "	No. 14.....	5,000.00
30 shares, \$100.00 " "	No. 15.....	3,000.00
10 shares, \$100.00 " "	No. 19.....	1,000.00
30 shares, \$100.00 " "	No. 21.....	3,000.00

Total 27,000.00

I also acknowledge the receipt of all of the other personal property belonging to said estate remaining in my hands as administratrix after the payment of the debt and expenses of said estate. This December 2nd, 1912.

JOSIE C. BAKER.

Respectfully submitted, this December 2nd, 1912.

L. L. HARBERT, *Clerk.*

STATE OF TENNESSEE,
Hardin County, ss:

I, L. L. Harbert, Clerk of the County Court of said County in said State, do hereby certify that the foregoing attached nine
195 pages contain a true, full and complete copy and transcript of the record and proceedings of said County Court in the matter of the administration of Josie C. Baker upon the estate of Charles Baker, deceased, as the same appears on file and of record in said court.

Witness my official signature and the seal of said Court, at office in the town of Savannah, Hardin County, Tennessee, this the 30th day of September, 1913.

L. L. HARBERT,
Clerk County Court of Hardin County, Tennessee.

STATE OF TENNESSEE,
Hardin County, ss:

I, W. P. Story County Judge of said Court of Hardin, and the presiding Judge of the County Court of said County, in said State, do hereby certify, that L. L. Harbert, whose genuine signature appears to the foregoing certificate, is and was at the time of affixing same, the clerk of the said County Court of Hardin County, duly elected and qualified, and that his said above attestation is in due form.

Witness my official signature and the seal of said court, at office in the town of Savannah, Hardin County, Tennessee, this the 30th day of September 1913.

[SEAL.]

W. P. STORY,
Judge of the County Court of Hardin County, Tennessee.

STATE OF TENNESSEE,
Hardin County, ss:

196 I, L. L. Harbert, Clerk of the County Court of said County, in said State, do hereby certify that W. P. Story, whose genuine signature appears to the foregoing certificate, is and was at the time of affixing the same, the presiding judge of the said County Court of Hardin County, duly elected and qualified, and his official acts are entitled to full faith and credit.

Witness my official signature and the seal of said court, at office in Savannah, Hardin County, Tennessee, this the 30th day of September 1913.

[SEAL.]

L. L. HARBERT,
Clerk County Court of Hardin County, Tennessee.

The following is Exhibit "C" referred to in the foregoing Amended Petition.

STATE OF TENNESSEE,
Hardin County:

Be it remembered that at a regular term of the Chancery Court of the 8th Chancery Division of the State of Tennessee, begun and held in the Court House in the town of Savannah for said County of Hardin on the 12th day of January Nineteen Hundred and three, and being the time fixed by law for holding said Court, T. J. Sawner, Sheriff of said County & A. D. Welch Clerk and Master of said Court being present, but the Chancellor, Hon. A. G. Hawkins not being present, D. A. Welch, Clerk & Master of said Court, adjourned the court until 9 o'clock tomorrow morning January 13th, 1903.

D. A. WELCH, C. & M.

TUESDAY, January 13th, 1903.

Court met pursuant to adjournment, and the Chancellor not being present, Court adjourned until 9 o'clock tomorrow morning
 197 Jany. 14, 1903.

D. A. WELCH, C. & M.

Ordered that Court adjourn until 9 o'clock tomorrow morning, January 14th, 1903.

C. A. WELCH, C. & M.

WEDNESDAY, January 14th, 1903.

Court met pursuant to adjournment. Hon. A. G. Hawkins, Chancellor, present & Presiding, when the following proceedings, among others, were had and entered of record, towit:

*Rules of Practice for Chancery Court of Hardin County.***First.**

All original process issued from this Court shall be made returnable to the second rule day after its issuance, and if served before the return day thereof, the defendants shall make defense by the succeeding rule day, provided, however, that when special application in the bill is made for the same, the Clerk and Master shall make the process returnable to the first rule day after its issuance; if there is sufficient time for the service thereof, and if served before the return day thereof, defense shall be made by the succeeding rule day, and, provided further, that all process, which for want of time between the date of issuance and the succeeding term of court, can not be made returnable, as aforesaid, shall be made returnable to the first term of the Court after the issuance thereof.

Second.

These rules shall be applicable to non-residents who are notified by publication in all cases in which there is sufficient time under the law to make publication before the succeeding term of the Court, (a) the rule days referred to and affected by the foregoing, are the first Mondays in each month.

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Third.

All exceptions to depositions required by Rule 2 section 5 of the rules of Chancery practice to be made before the hearing, shall be made at the first term, after the depositions are filed, otherwise they will be considered as waived.

Fourth.

All applications for juries to try issues of fact, unless made in the original pleadings, shall be made of record either on the rule docket or on the minutes of the Court, within the first two days of the first term after order pro confesso, or answer filed, otherwise the right of trial by jury shall be deemed conclusively as waived.

Fifth.

If the Master shall fail to file any report as directed by interlocutory decree, he shall file in writing, his excuse therefor.

All rules heretofore made in this court on the same subjects embraced in the foregoing are hereby vacated, and the foregoing substituted therefor.

The foregoing rules shall take effect as of the last day, of the present term, except as to depositions now on file, and as to them at the beginning of the next term.

STATE OF TENNESSEE,
Hardin County, ss:

I, W. H. Carrington, Clerk and Master of the Chancery Court of said County of Hardin, in said State, and being the clerk of said Court, do hereby certify that the foregoing attached three pages including this page, contain a true, full and complete copy of the rules of the practice of said Court for Hardin County as made by the Chancellor, and entered of record on the Minutes of said Court by order of the Chancellor as the same appear of record in said Court.

199 Witness my official signature and the seal of said court at office in the town of Savannah, Hardin County, Tennessee, on this the 30th day of September, 1913.

[SEAL.]

W. H. CARRINGTON,
*Clerk and Master of the Chancery Court
of Hardin County, Tennessee.*

STATE OF TENNESSEE,
Madison County:

I, E. L. Bullock, Chancellor of the Eighth Chancery Division of the State of Tennessee, and the sole Judge of the Chancery Court within and for the county of Hardin in the State of Tennessee, one of the counties composing Eighth Chancery Division, the same being a court of record, do hereby certify that the signature attached to the above certificate purporting to be that of W. H. Carrington, is his genuine signature, and that he was at the time of the date of said certificate, Clerk and Master of said Chancery Court, duly appointed and qualified, and that as such, full faith and credit are due all of his acts, and that his said above attestation is in due form of law and by the proper officer.

In witness whereof I have hereunto set my hand and affixed the seal of said court on this, the 3^d day of October, 1913.

[SEAL.]

E. L. BULLOCK,
*Chancellor and Sole Judge of the Chancery
Court of Hardin County, Tennessee.*

200 STATE OF TENNESSEE,
Hardin County:

I, W. H. Carrington, Clerk and Master of the Chancery Court, within and for said County of Hardin, the same being a court of record, do hereby certify that E. L. Bullock, whose genuine signature appears to the foregoing certificate, is and was at the time of affixing the same, the sole and presiding Judge of the said Chancery Court of said County of Hardin, duly elected and qualified, and his official acts are entitled to full faith and credit.

Witness my official signature and the seal of said court at office in Savannah, Hardin County, Tennessee, this, the 4th day of October, 1913:

[SEAL.]

W. H. CARRINGTON,
*Clerk and Master of the Chancery Court
of Hardin County, Tennessee.*

The following is the second amended petition referred to in the foregoing order, viz:

The plaintiff, Josephine C. Baker, individually and as administratrix of Charles Baker, deceased, with leave of Court, again amends her Petition in Equity and Amended Petition No. 1 herein, and states that Mrs. Augusta H. Baker of Paducah, Kentucky, who is the mother of Charles Baker, deceased husband of Plaintiff, is, as she is informed and here charges, claiming a right to or interest in the property of its proceeds now involved in this litigation and set forth particularly in the Petition in Equity originally filed in this action.

Plaintiff says that because of such claim, the said Mrs. Augusta H. Baker is a necessary party defendant to this action.

Plaintiff further states that the defendant Mrs. Augusta H. Baker has no right to or interest in any of the property or
 201 proceeds thereof involved in this action, but all of it belongs to this Plaintiff as and in the way and manner fully set forth and described in the Petition in Equity and Amended Petition in Equity No. 1 filed in this action; and by reason thereof and by further reason of said judgments of the County and Chancery Courts of Hardin County, Tennessee therein filed, set up and relied on and the record therein exemplified, to both and all of which proceedings upon which said judgments were rendered, the
 202 said Mrs. Augusta H. Baker was a party defendant, duly and regularly summoned therein, under and according to the laws of Tennessee in the several actions then pending in said Courts, and both of which Courts were when said judgments were respectively rendered, Courts of general and superior jurisdiction; and in which actions and proceedings, and the judgments therein rendered the right to and interest in the property here in controversy as between Plaintiff and the aforesaid Mrs. Augusta H. Baker, was there directly in controversy and involved, the said Mrs. Augusta H. Baker has no right, title or interest in or to any part of such property or proceeds, but all of same belongs to the Plaintiff and she is entitled to recover the full amount thereof because of the facts and in the way and manner set forth and described in her Petition in Equity and Amended Petition in Equity No. 1 herein.

Wherefore, Plaintiff prays that Mrs. Augusta H. Baker aforesaid, be made a party defendant to this action and summoned herein, and further for the relief prayed for in her Petition and Amended Petition in this action, and for her costs herein expended and for all other proper and equitable relief to which she may appear entitled.

ROSS & ROSS,
 JOHN A. PITTS AND
 C. C. GRASSHAM,
Attorneys for Plaintiff.

The affiant, C. C. Grassham, states that Plaintiff, Mrs. Josephine C. Baker, is a non-resident of the State of Kentucky and is now absent therefrom and now absent from the County of McCracken, Kentucky, and that this affiant, C. C. Grassham, is her attorney, and as

such makes this affidavit. He states that the allegations of the foregoing Amended Petition in Equity No. 2 are as he believes, true.
C. C. GRASSHAM.

203 Subscribed and sworn to before me by C. C. Grassham this the 25th day of October, 1913.

FRANCES JOHNSON,
Notary Public, McCracken Co., Ky.

The following is the reply to answer of defendant, Baker, Eccles & Company, referred to in the foregoing order, viz:

Paragraph 1.

The Plaintiff, Josephine C. Baker, individually and as administratrix of Charles Baker, deceased, for reply to the Answer of Baker, Eccles & Company, denies that Charles Baker, deceased, was at the time of his death, or had been for many years prior thereto or at all, a citizen or resident of or domiciled in Paducah, McCracken County, Kentucky.

Plaintiff denies that she individually or as administratrix or at all, at any time wrongfully or without right, obtained possession of the certificates representing the 270 shares of stock or any of them, after the death of her husband, from the First National Bank of Paducah, Kentucky, and denies that the said Charles Baker had placed them there for safe keeping or deposited them there with instructions to notify E. W. Baker, his brother, or William Baker, his nephew in the event of his death, and denies that after the death of said Charles Baker the Plaintiff procured said Bank to deliver to her said certificates of stock or any of them, or that in that way she obtained possession of same.

Plaintiff denies that at the time of the demand for the transfer of said stock in the name of Charles Baker deceased, no certificates of stocks or stubs therefor appeared on its books as belonging to Charles Baker, deceased, or that all of the stock or any of it standing in the name of Charles Baker, deceased, had been transferred to other persons or anybody, in obedience to a judgment of the Circuit Court of McCracken County, Kentucky, or that all or any of the
204 money belonging to the estate of Charles Baker at the time of said demand, had in obedience to the orders of the said McCracken Circuit Court, been delivered by Defendant to Mrs. Augusta H. Baker, Administratrix of the estate of Charles Baker, or any one else, for Plaintiff states that the first demand made by her of the Defendant was made long prior to the alleged judgment and orders of the McCracken Circuit Court, and long prior to the alleged appointment of Mrs. Augusta H. Baker as Administratrix of the estate of Charles Baker, deceased.

Paragraph 2.

For further reply to the Answer of Defendant, and especially Paragraph 2 thereof, Plaintiff denies that Charles Baker died on

the 1st day of September, 1912 a resident of or domiciled in Paducah, McCracken County, Kentucky, and denies that he left surviving him as his only heirs at law, his wife, Plaintiff, and his mother, Mrs. Augusta H. Baker, for she states that Mrs. Augusta H. Baker, his mother, was not an heir at law or an heir at all of said Charles Baker, deceased.

She denies that she, Josephine C. Baker, as the surviving wife of Charles Baker, deceased, had failed to qualify as the personal representative of his estate prior to the 27th day of November, 1912, and denies that Mrs. Augusta H. Baker, mother of Charles Baker, was entitled to or is entitled to administer upon his estate under the laws of Kentucky, and denies Kentucky was the place of his residence at his death or at all, and denies that Mrs. Augusta H. Baker was by the McCracken County Court, duly appointed Administratrix of said Charles Baker, deceased.

Plaintiff denies that the money and personal property belonging to Charles Baker, deceased, held by Defendant Baker, Eccles & Company was, in obedience to the demand of said alleged administratrix, Mrs. Augusta H. Baker, delivered to her or that she yet holds or controls same.

Plaintiff denies that afterwards or at all, the said Mrs. 205 Augusta H. Baker as Administratrix of said Charles Baker, deceased, commenced her action in the McCracken Circuit Court against the Plaintiff as surviving widow of Charles Baker, deceased, or at all, and the Defendant Baker, Eccles & Company or the unknown creditors of Charles Baker, deceased, or either. She denies that said alleged action progressed to judgment on the 13th day of February, 1913, and denies that said McCracken Circuit Court adjudged or determined among other things, that,

"Said Defendant, Baker, Eccles & Company be and they are hereby directed to cancel all certificates of stock issued by the said Company to the said Charles Baker, deceased, and to re-issue one half of said 270 shares to the order of Mrs. Josephine C. Baker, surviving widow of said decedent, and one half to the order of Mrs. Augusta H. Baker, surviving mother of said decedent;"

for plaintiff states the McCracken Circuit Court did not have power, authority or jurisdiction to adjudge or determine said matter, and could not and did not adjudge and determine same.

Plaintiff denies that the Defendant, Baker, Eccles & Company in obedience to the alleged judgment and decree of said McCracken Circuit Court, did re-issue to said Mrs. Josephine C. Baker or to Mrs. Augusta H. Baker, certificates of stock for certificates held by Charles Baker, deceased, and denies that it was directed or adjudged to do so by said McCracken Circuit Court, or delivered said certificates of stock to Mrs. Augusta H. Baker, Administratrix of Charles Baker, deceased.

Plaintiff denies that Defendant has no property in its possession belonging to the estate of Charles Baker, deceased, and denies that said facts or any of them were well or at all known to Plaintiff at the time this suit was instituted; and she denies that all of his prop-

erty or any of it is in the possession of his alleged Admin-
206 istratrix, Mrs. Augusta H. Baker, or has been paid out to her
order.

Paragraph 3.

For further reply to the Answer of the Defendant Baker, Eccles & Company, Plaintiff states that she, individually or as Administra-
trix of the estate of Charles Baker, deceased, was never made a
party to the alleged cause of action said to have been filed in the
McCracken Circuit Court by Mrs. Augusta H. Baker, Administra-
trix of Charles Baker, deceased, plaintiff vs. Mrs. Josephine C. Baker
and Baker, Eccles & Company and the unknown creditors of Charles
Baker, and that she never at any time by any act, entered her ap-
pearance or authorized any one to enter her appearance in any wise
to said alleged action; and she further states that at no time was said
alleged action filed or commenced against her. She further states
that no affidavit for a warning order or for the appointment of a
non-resident attorney to correspond with her and notify her of the
pendency of said action and that she was made a party thereto, was
ever at any time made in said alleged proceeding, and no affidavit
was filed or attempted to be filed except as attempted by the allega-
tions contained in the original petition of said case and sworn to,
and none was ever otherwise filed, made or attempted, in any other
paper, affidavit or pleading, and no warning order was ever made or
had against her therein, and she was never at any time construct-
ively served in said alleged proceeding, and was never at any time
served with a summons or other process therein. She here exhibits
a certified copy of all of the pleadings filed and attempted to be
filed in said alleged action and proceeding, together with certified
copy of the judgment therein, and copy of the summons, and makes
them a part hereof and marks them Exhibits 1 to 4 inclusive; and
Plaintiff here states and shows to the Court that in none of said
pleadings is there any affidavit authorizing the making of
207 any warning order against this Plaintiff in said alleged pro-
ceeding, and any and all attempts at the making of a warn-
ing order therein were and are null and void, and she here states
that because of the fact that she was not made a party to said pro-
ceedings and was not summoned as required by law, and did not
enter her appearance thereto, that all of the proceedings therewith
connected and all matters and things attempted to be adjudged and
determined by the McCracken Circuit Court were and are null and
void as to her and her rights in said alleged proceeding, and she
here shows to the Court that the petition and amended petitions and
the judgment of said alleged proceedings referred to, show upon their
faces that there was no affidavit made and that this plaintiff was
never made a party or summoned therein and that the McCracken
Circuit Court never had any jurisdiction by which to determine
or adjudge anything whatsoever affecting her rights in the estate
of Charles Baker, deceased, or as to any rights of hers as between
her and the Defendant Baker, Eccles & Company, for all of said
alleged proceedings, including aforesaid judgments, were and are
null and void as to this Plaintiff.

Wherefore having replied fully, Plaintiff prays as in her petition and for all other proper and equitable relief.

ROSS & ROSS,
JOHN A. PITTS, AND
C. C. GRASSHAM,
Attorneys for Plaintiff.

208 The following is the answer to the petition of Mrs. Augusta H. Baker, Administratrix, &c., referred to in the foregoing order, viz:

Paragraph 1.

For Answer to the Petition of Mrs. Augusta H. Baker, Administratrix of Charles Baker, deceased, the Plaintiff, Josephine C. Baker, individually and as administratrix of Charles Baker, deceased, denies that she, the Petitioner, is interested in the matters or things involved in this controversy.

Plaintiff denies that Charles Baker had resided in or was a citizen of Paducah, McCracken County, Kentucky for about twelve years, or any length of time prior to his death. She denies that under the laws of the State of Kentucky his estate descended one half of the surplus personalty to her and the other one half to the Petitioner, his mother. She denies that upon the death of said Charles Baker she left Paducah where she had resided with her husband for twelve years or any time, for she had not done so; and denies that she pretends to be a resident and citizen of the State of Tennessee, but says she is in fact both a citizen and resident of the State of Tennessee.

She denies that on the 27th day of December, 1912 or at any other time, and after the said Mrs. Augusta H. Baker had ascertained that Plaintiff would not apply for letters of administration from the McCracken Circuit Court, but would present or claim that Charles Baker was a resident of the State of Tennessee at the time of his death, Petitioner was duly or regularly appointed administratrix of said estate. She denies that the Petitioner caused the said estate to be appraised or that she took possession thereof or now holds same, except such sums as she has paid out for purposes hereinafter set forth, or any of it.

209 She denies that on the 3rd day of December, after Petitioner's alleged appointment as administratrix, she filed a suit in the McCracken Circuit Court to settle said estate, by which she made Plaintiff party defendant to said action. She denies that she had both actual and constructive knowledge of the pendency of said suit and the purpose thereof, or any knowledge of either. She denies that in any suit against this Plaintiff, Petitioner charged that Charles Baker was a resident of McCracken County, Kentucky at the time of his death, or that his estate was entitled to be, or as a matter of law must be, administered according to the laws of the State of Kentucky, and denies that either of said facts were or are true; and denies that on the 13th day of February, 1913 said McCracken Circuit Court did adjudge or determine that Charles Baker

was a resident of McCracken County, Kentucky, at the time of his death or that his estate after the payment of debts should be divided, one half to Mrs. Josephine C. Baker, surviving widow, and one half to Mrs. Augusta H. Baker, his mother; or that he left no children, or that Baker, Eccles & Company should cancel all or any of the certificates of stock formerly issued to Charles Baker in said Company, or re-issue same, one half to the Petitioner or one half to the order of Mrs. Josephine C. Baker. She denies that upon the rendition of said judgment, for none was rendered against this Plaintiff, nor could any be because she was not summoned in said action, nor within the jurisdiction of said Court, that the Petitioner caused Baker, Eccles & Company to re-issue said certificates of stock belonging to the estate of Charles Baker, in accordance with any judgment of the McCracken Circuit Court, or that she now holds same as administratrix of the estate of Charles Baker, deceased, for Plaintiff states that she is and at all times has been since the death of Charles Baker, the owner and holder of said 270 shares of stock owned by him in the corporation of Baker, Eccles & Company.

210 Plaintiff denies that the judgment of the McCracken Circuit Court was or is binding or at all conclusive upon her, or determines or adjudges that the citizenship of said Charles Baker, or its findings or judgment that said Charles Baker was a citizen of McCracken County, Kentucky is conclusive upon said Mrs. Josephine C. Baker or all or any persons interested in the estate of Charles Baker, deceased.

Plaintiff denies that before the death of Charles Baker, he deposited aforesaid certificates of stocks in a box or safety vault in the First National Bank of Paducah, Kentucky, with memoranda of instructions to the officers of said Bank or any of them, or any instructions that in the event of the death of said Charles Baker said Bank should notify said E. W. Baker, his brother, or William Baker, his nephew; she denies that after the death of said Charles Baker that she, Josephine C. Baker, induced said Bank to deliver said certificates of stock to her; she denies that the action of the said Bank was wrongful or illegal, and denies that she now holds or has ever held said certificates of stock so obtained, for they were not so obtained, wrongfully or without right, and denies that same or any of them are worthless or of no value or have been cancelled in obedience to the orders of the Court, for she states that said Court had no power or authority to cancel same.

Paragraph 2.

For Answer to Paragraph 2 of the Petition of Mrs. Augusta H. Baker, Administratrix of Charles Baker, deceased, the plaintiff, Josephine C. Baker, individually and as administratrix of Charles Baker, deceased, denies that Charles Baker deceased, was prior or at the time of his death, indebted to Baker, Eccles & Company in the sum of \$514.00 or any part thereof and denies that Petitioner paid same or was required to pay same or any part thereof. She

211 denies that said Charles Baker, prior or at the time of his death, was indebted to the said City of Paducah, in the sum

of \$126.69 for taxes on personalty, or either or any part thereof, and denies that Petitioner paid same or any of it or had authority to pay same or any of it under the judgment of the McCracken County Court, and denies that McCracken County Court had any authority or jurisdiction over the subject matter or person of the estate or representative thereof, of Charles Baker, deceased, to render said judgment or make any such order.

Plaintiff denies that the Petitioner, Mrs. Augusta H. Baker, paid the costs accruing in said action instituted by her in the McCracken Circuit Court, amounting to \$1,079.75, but says if she did pay same or any part thereof, she paid it without right of authority, for this Plaintiff was never at any time summoned or proceeded against in said alleged action, and any judgment ordering or directing Petitioner to make said payment out of the funds of the estate of Charles Baker, deceased, was so far as Plaintiff is concerned, illegal and void and is yet so.

Plaintiff says that she has not sufficient information to form a belief and therefore denies, that the alleged administratrix, Mrs. Augusta H. Baker, has a net amount in her hands as such, of \$9,708.62 or any sum less than \$11,249.17, if any of that she has, and whatever she has wrongfully and illegally collected, by those acting for her wrongfully and illegally, representing to the County Court of McCracken County that the residence and domicile of Charles Baker, deceased, was at the time of his death, in McCracken County, Kentucky, when in truth and in fact the said Charles Baker never at any time resided or was domiciled in Paducah, McCracken County, Kentucky, but only carried on business therein, and at all times during his life was a resident of and domiciled in the State of Tennessee, with property interests there, both real and personal, and always regarded Savannah, Tennessee, as his home, treated it as such, spoke of it as such, and at the time of his death was then
 212 contemplating and making an effort to quit carrying on his business in Paducah and remain permanently and continuously in Savannah, Tennessee, and any moneys that the Petitioner collected from Baker, Eccles & Company was collected and received on aforesaid misrepresentation and on the combined effort made and had between Baker, Eccles & Company, E. W. Baker of Baker, Eccles & Company, a son of Mrs. Augusta H. Baker, and the said Mrs. Augusta H. Baker, so as to attempt to give the County Court of McCracken County and the Circuit Court of McCracken County, Kentucky jurisdiction of the estate of said Charles Baker, deceased, and therefore invest the said Mrs. Augusta H. Baker with an interest in and title to one half of the surplus personalty of which said Charles Baker died the owner, so that this Plaintiff would not receive her distributable share of the property under the laws of Tennessee as therein provided, and so that following the death of Mrs. Augusta H. Baker, who is now past eighty years of age, the aforesaid E. W. Baker of Baker, Eccles & Company can receive by inheritance or otherwise, the said one half interest in Charles Baker's estate, which plaintiff is here sought to be deprived of.

Plaintiff denies that the Chancery Court of Hardin County, Ten-

nessee had no jurisdiction over the person of Mrs. Augusta H. Baker in the suit for settlement of Charles Baker's estate, instituted by this Plaintiff in Hardin County and in the Chancery Court thereof, against Mrs. Augusta H. Baker &c., and denies that it had no jurisdiction of the subject matter of the suit for the settlement of his estate. She denies that said Court had no jurisdiction or power or authority to determine that Charles Baker was at the time of his death, a citizen of the State of Tennessee or domiciled at Savannah, and denies that this judgment or decree in so determining was or is void or of no effect, and denies that said Court had no jurisdiction or authority to determine or decree that said Josephine C. Baker was the sole distributee or entitled to all of the personal estate of which Charles Baker died possessed; and denies that it had no jurisdiction or power to decree or determine that said Josephine C. Baker was individually entitled to any number of the 270 shares of stock held by Charles Baker at the time of his death, in the Bakes, Eccles & Company.

Plaintiff denies that at the time she made demand upon Baker, Eccles & Company for the transfer of said 270 shares of stock formerly owned by Charles Baker, deceased, or at the time she made demand upon said Company for the payment to her of money formerly belonging to Charles Baker, deceased, that she well or at all knew that the money formerly belonging to the estate of Charles Baker, deceased, was held by her as administratrix, for such was not true, for Plaintiff says that at the time the first demand was made from Baker, Eccles & Company, the Petitioner, Mrs. Augusta H. Baker, had not yet attempted to be appointed administratrix of Charles Baker, deceased, in McCracken County, Kentucky; and Plaintiff denies that she knew well or at all that the certificates of stock in the name of Charles Baker, deceased, had been cancelled or reissued, one half to the order of Petitioner and one half to the order of Mrs. Josephine C. Baker, for such was not true.

Plaintiff denies that she has at all times known that the estate of Charles Baker, deceased, was being administered by Petitioner, and the personalty thereof controlled by her absolutely, for she states that at all times she has been advised by her counsel that she, Plaintiff, was never legally made a party to said proceeding in the 214 McCracken Circuit Court or summoned or warned to appear therein, and she has never at any time been advised or thought it necessary, to in any wise consult with Petitioner concerning the disposition of the estate, which this Plaintiff has been adjudged to own and given authority to collect and control under and by virtue of the orders and judgment of the Chancery Court of Tennessee in her Petition heretofore set out.

She denies that she is only entitled personally to collect or receive any part of the estate of Charles Baker, deceased, as administratrix thereof, or hold any part thereof if any capacity other than as distributee, and denies that she is only entitled to receive from Petitioner as administratrix of Charles Baker, deceased, her interest, for she states that the Petitioner has nothing whatever to do with the

rights of Plaintiff or her interest in the estate of Charles Baker, and has no interest therein herself, personally or as administratrix.

Paragraph 3.

For further answer to the Petition of Mrs. Augusta H. Baker, Administratrix of Charles Baker, deceased, Plaintiff states that she, individually or as Administratrix of the estate of Charles Baker, deceased, was never made a party to the alleged cause of action said to have been filed in the McCracken Circuit Court by Mrs. Augusta H. Baker, Administratrix of Charles Baker, deceased, plaintiff vs. Mrs. Josephine C. Baker and Baker, Eccles & Company and the unknown creditors of Charles Baker, and that she never at any time by any act, entered her appearance or authorized any one to enter her appearance in anywise to said alleged action; and she further states that at no time was said alleged action filed or commenced against her. She further states that no affidavit for a warning order or for the appointment of a non-resident attorney to correspond with her and notify her of the pendency of said action and that she was made a party thereto, was ever at any time made in said alleged
215 proceeding, and no affidavit was filed or attempted to be filed except as attempted by the allegations contained in the original petition of said case and sworn to and none was otherwise filed, made or attempted in any other paper, affidavit or pleading, and no warning order was ever made or had against her therein, and she was never at any time constructively served in said alleged proceeding, and was never at any time served with a summons or other process therein. She here exhibits a certified copy of all of the pleadings filed and attempted to be filed in said alleged action and proceeding, together with certified copy of the judgment therein, and copy of the summons, and makes them a part hereof and marks them Exhibits 1 to 4 inclusive; and Plaintiff here states and shows to the Court that in none of said pleadings is there any affidavit authorizing the making of any warning order against this Plaintiff in said alleged proceedings, and any and all attempts at the making of a warning order therein were and are null and void, and she here states that because of the fact that she was not made a party to said proceedings and was not summoned as required by law, and did not enter her appearance thereto, that all of the proceedings therewith connected and all matters and things attempted to be adjudged and determined by the McCracken Circuit Court were and are null and void as to her and her rights in said alleged proceeding, and she here shows to the Court that the petition and amended petitions and the judgment of said alleged proceedings referred to, show upon their faces that there was no affidavit made and that this Plaintiff was never made a party or summoned therein and that the McCracken Circuit Court never had any jurisdiction by which to determine or adjudge anything whatsoever affecting her rights in the estate of Charles Baker, deceased, or as to any rights of hers as between her and the Defendant, Baker, Eccles & Company, for all of said alleged proceedings, including aforesaid judgment, were and are null
216 and void as to this plaintiff.

Wherefore having replied fully, Plaintiff prays as in her petition, and for all other proper and equitable relief.

ROSS & ROSS,
JOHN A. PITTS, AND
C. C. GRASSHAM,
Attorneys for Plaintiff.

(The exhibits 1 to 4 inclusive referred to in the foregoing answer were not filed with said answer.)

Afterwards to-wit at the same term of the above named Court on the 5th. day of November, 1913, the following order was made herein, viz:

This day came def't Mrs. Augusta H. Baker, Adm'x, and filed general demurrer to plaintiff's answer, and without waiving a demurrer filed reply. Said def't, Mrs. Augusta H. Baker, individually, also filed answer to amended petition No. 2. Came def't, Baker, Eccles & Co., and filed demurrer to the 3rd paragraph of plaintiff's reply, and without waiving said demurrer filed rejoinder. Said def't, Baker, Eccles & Co., also filed answer to plaintiff's amended petition No. 2.

The following is the demurrer of defendant, Mrs. Augusta H. Baker, Adm'x to plaintiff's answer, referred to in the foregoing order, viz:

The petitioner, Mrs. Augusta H. Baker, administratrix of Charles Baker, deceased, demurs generally to the third paragraph of the plaintiff's answer herein, and for cause says no matter of defense is stated therein, and on this demurrer she asks the judgment of the Court.

WHEELER & HUGHES.

(Josie C.)

217 The following is the reply to the answer of Mrs. Augusta H. Baker, Adm'x of Charles Baker, deceased, referred to in the foregoing order, viz:

The defendant, Mrs. Augusta H. Baker, administratrix of Charles Baker, deceased, for reply to the answer of the plaintiff herein, denies that no judgment was rendered against the plaintiff by the McCracken Circuit Court in the action of Mrs. Augusta H. Baker, administratrix of Charles Baker, deceased, plaintiff, vs. Mrs. Josephine C. Baker and others, defendants, and denies that Mrs. Josephine C. Baker was not summoned in said action; denies that she was not within the jurisdiction of this Court; she denies that the plaintiff is now or has been at any time the owner or rightful holder of any of the shares of stock owned by Charles Baker, deceased, in the corporation of Baker, Eccles & Company, other and further than she is the surviving widow of said decedent, and entitled to one half of the surplus personalty of said decedent, including one half of the shares of stock mentioned. She denies that this Court did not have authority and power to order and direct the can-

cellation of the certificates, of stock held by the decedent, Charles Baker, and the reissue thereof in accordance with the judgment of this Court. She denies that the plaintiff was not proceeded against in the action filed in the McCracken Circuit Court above referred to; and denies that the judgment ordering and directing this petitioner to make payment out of the funds of the estate of Charles Baker, deceased, was, as far as plaintiff is concerned, illegal or void, or is yet so. It denies that the money collected by her as the property of Charles Baker, deceased, was wrongfully or illegally collected; it denies that she, or any one acting for her, wrongfully or illegally represented to the County Court of McCracken County that the residence and domicile of Charles Baker, deceased, was at the time of his death in McCracken County, Kentucky; and she denies that either in truth or in fact the said Charles Baker never at any time resided in or was domiciled in Paducah, McCracken County,

218 Kentucky; she denies that he not only carried on business in Paducah, for he both lived and resided there; she denies that all times during his life he was a resident of or domiciled in the State of Tennessee, though it is true he had a small property interest there, consisting of an undivided interest in a little land, which was rented for a small sum, but with this exception all of his property was, at the time of his death, and had been for many years previous thereto, in Paducah, Kentucky, where he lived. She denies that he always or ever regarded Savannah, Tennessee, as his home after he moved to Paducah to live, or he ever treated it as such, though it is true he spoke of it as his home, as all men speak of the place of their nativity as home wherever they may be or wherever they may reside.

It is untrue, and she denies that at the time of his death he was then or had ever contemplated, or was making an effort to quit carrying on business in Paducah, or remain permanently or continuously, or at all, in Savannah, Tennessee; and she denies that any money collected by her was collected or received on any misrepresentations, as set forth in the answer, or upon the combined or any effort made or had between Baker, Eccles & Company, E. W. Baker and this plaintiff, or upon any misrepresentations upon the part of any of the persons named, or of any one else; she denies that she made any effort, as complained of, or at all, to invest either the McCracken County Court or the McCracken Circuit Court by any misrepresentations or untruthful statement jurisdiction of the estate of Charles Baker, deceased, or to therefore invest this petitioner with any interest in or title to any part of the surplus personalty of which said Charles Baker died the owner. She says that she was, as matter of law, entitled to one half under the laws of the

219 State of Kentucky; she denies that she misrepresented any statement of fact with Baker, Eccles & Company and E. W. Baker, or any one else for the purpose or intention of depriving plaintiff of any distributable share of the estate of the decedent, Charles Baker. She denies that E. W. Baker has any interest in the estate of Charles Baker, deceased, or any interest in the property she has inherited or will inherit from the estate of her son, Charles Baker,

deceased. She denies that any demand was ever made of her as administratrix of Charles Baker, deceased, by the plaintiff or any one representing her, of any part of the estate of Charles Baker, deceased; she denies that the plaintiff was not legally a party to the proceedings in the McCracken Circuit Court; denies that she was not warned to appear therein, though it is quite likely she was advised to pursue the course she has, the wisdom of which advice of counsel will appear from the final judgment herein. She denies that she has nothing to do whatever, with the rights of the plaintiff, or her interest in the estate of Charles Baker, deceased; and denies that she has no interest therein, personally, or as administratrix; she denies that the plaintiff was not individually a party to the cause of action filed by this petitioner as administratrix of Charles Baker, deceased, against Mrs. Josephine C. Baker and Baker, Eccles & Company in the McCracken Circuit Court; she denies that said action was not filed

220 against and legally commenced against her; she denies that no affidavit for a warning order was made in said action;

she denies that a non-resident attorney was not appointed to correspond with plaintiff, and to notify her of the pendency of said action, for she says that an attorney was appointed for the plaintiff and did notify her, and make due report thereof to this Court. She denies that the plaintiff was not constructively served in said proceedings; she denies that there is no pleading in said action authorizing the making of a warning order against plaintiff; and denies that the affidavit in said petition for the warning order is or was null or void; denies that for such reason or any other reason plaintiff was not a party to said proceedings; and denies that all or any of the proceedings, connected with said action, or at all, or any matters or things, adjudged and determined by this Court therein, were or are null and void, as to her or her rights therein passed upon. She denies that the petition or amended petition in said action show upon their face there was no affidavit made for a warning order, or that plaintiff was never a party therein, or that this Court ever had any jurisdiction to determine or adjudge all things whatsoever, affecting her rights in the estate of Charles Baker, deceased, or any and all rights of plaintiff as between her and this petitioner or likewise the defendant, Baker, Eccles & Company, and again denies that any of said proceedings in said action were or are null or void as to plaintiff or anyone else.

Now, having fully replied to the plaintiff's answer, the petitioner prays as in her original petition, and for all other and further relief to which in law or equity she may be entitled to receive.

WHEELER & HUGHES,

For Petitioner.

221 The following is the answer of defendant, Mrs. Augusta H. Baker, individually, to amended petition No. 2, referred to in the foregoing order, viz:

Mrs. Augusta H. Baker, made a party hereto as an individual, adopts as her answer and each and every allegation thereof, of the reply filed by Augusta H. Baker, administratrix of Charles Baker,

deceased, to the answer of the plaintiff to the petition of Mrs. Augusta H. Baker, as administratrix, and asks that the reply to such answer be taken as her answer to the amended petition in equity No. 2 of the plaintiff herein.

Wherefore, Mrs. Augusta H. Baker prays that she be adjudged and determined the rightful administratrix of the estate of Charles Baker, deceased, and entitled, as his mother and one of his heirs, to one half of the surplus personalty left by said decedent, and for all other and further relief to which in law or equity she may be entitled to receive.

WHEELER & HUGHES,
Att'ys for Mrs. Baker.

The following is demurrer filed by defendant, Baker, Eccles & Company, to third paragraph of plaintiff's reply, referred to in the foregoing order, viz:

The defendants, Baker, Eccles & Company, demur generally to the third paragraph of the reply filed by Mrs. Josephine C. Baker herein, and for cause say no matter of reply is contained therein, and on this demurrer it asks the judgment of the Court.

222 The following is the rejoinder to the reply of Baker, Eccles & Company, referred to in the foregoing order, viz: Baker, Eccles & Company for rejoinder to the reply of the plaintiff herein, deny that any demand made by plaintiff of the defendant was made long prior to, or any time prior to the judgment and orders of the McCracken Circuit Court, so long or at all prior to the appointment of Mrs. Augusta H. Baker as administratrix of Charles Baker, deceased. They deny that Mrs. Augusta H. Baker, mother of Charles Baker, deceased, was not and is not an heir at law of said Charles Baker, deceased. They deny that the McCracken Circuit Court did not have power and authority and jurisdiction to adjudge and determine any and all matters and things adjudged and determined by said Court in its judgment rendered on the 13th day of February, 1913. They deny that the plaintiff was not individually a party to the action filed in the McCracken Circuit Court by Mrs. Augusta H. Baker, administratrix of Charles Baker, deceased, vs. Mrs. Josephine C. Baker and Baker, Eccles & Company, and denies that said action was not regularly and duly commenced against her; they deny that no affidavit for warning order or for the appointment of a non-resident attorney to correspond with her and notify her of the pendency of said action was ever made in said proceeding; they deny that no affidavit was filed; they deny that she was not constructively served in said proceedings, but aver that she was before said Court constructively served as required by the laws of the State of Kentucky, and is bound by said judgment. They deny that the warning order made therein was null and void, but say that the same was and is in full force and effect in accordance with the laws of the State of Kentucky; and they deny that the proceedings in said suit, and connected therewith, or all or any matters or things attempted to be, and which were adjudged and

223 determined by the McCracken Circuit Court were or are null or void as to her or her rights; and again deny that any of the proceedings in said action, or the judgment therein rendered, was or is null or void as to plaintiff, or that she was not made a party to such proceedings.

Now, having fully rejoined to the reply of the plaintiff herein, defendants pray as in their original answer, and for all general relief.

WHEELER & HUGHES,

For Def'ts.

The following is the answer of defendant, Baker, Eccles & Company, to plaintiff's amended petition No. 2, referred to in the foregoing order, viz:

The defendants, for answer to the amended petition of the plaintiff herein, styled amended petition No. 2, say it is untrue and they deny that Mrs. Augusta H. Baker has any right to or interest in any of the property, or proceeds thereof, involved in this action; they deny that all or any more than one half thereof belongs to the plaintiff; they deny that Mrs. Augusta H. Baker was a party defendant to the action in which judgment was rendered in either the Chancery or County Court of Hardin County, Tennessee. They deny that Mrs. Augusta H. Baker was duly or regularly, or at all, summoned therein either under or according to the laws of the State of Tennessee or of Kentucky; they deny that both or either of said Courts were, when said judgments or either of them were respectively rendered, Courts of general or superior jurisdiction; and they deny that the right to or interest in the property herein involved and claimed by the said Mrs. Augusta H. Baker, administratrix of Charles Baker, deceased, was there directly, or at all, in controversy or involved; and denies that plaintiff is entitled to recover the full of any more than one half the amount of the property of said Charles Baker, deceased.

224 Now, having fully answered, defendants pray as in their original answer and for all general relief.

WHEELER & HUGHES,

For Def'ts.

Afterwards, to wit at the same Term of the above mentioned Court, on the 6th day of November, 1913, the following order was made herein, viz:

This day came plaintiff and filed general demurrer to the answer of def'ts, to amended petition No. 2, and the Court being advised overruled said demurrer, to which the plaintiff excepted. Plaintiff offered to file amended answer to the amended petition of Mrs. Augusta H. Baker, Adm'x, to which the said def't, objected and the Court being advised overruled said objection and ordered said amended answer to be filed to which the said def't, excepted.

The following is the general demurrer to the answer of defendants to amended petition No. 2, referred to in the foregoing order, viz:

Comes the plaintiff, Mrs. Josephine C. Baker, Individually and

as administratrix of Charles Baker, deceased, and demurs generally to the Answer to the Amended Petition in Equity No. 2 filed by defendants herein, and for cause states that said Answer does not state any facts or fact sufficient to constitute or support a defense, and further because defendants have no right in law or equity to thus question collaterally or at all, the judgment of the Tennessee courts, attacked herein: and on this she asks the judgment of the Court.

ROSS & ROSS,
JOHN A. PITTS, AND
C. C. GRASSHAM,
Attorneys for Plaintiff.

225 The following is the amended answer of plaintiff to amended petition of Mrs. Augusta H. Baker, Adm'x, referred to in the foregoing order, viz:

The plaintiff, Josie C. Baker, Administratrix of Charles Baker, deceased, by way of further and amended answer in addition to the traverse thereto heretofore made and entered of record in this proceeding to the amended petition of Mrs. Augusta H. Baker, Administratrix of Charles Baker, deceased, to be made a party defendant hereto, states:

I.

That the said Charles Baker died in the State of Tennessee; that by the statute law of the State of Tennessee, to wit by Chapter 36 of the Acts of the General Assembly of said State of 1859-1860, and by section 3939 of Shannon's Annotated Code of Tennessee of 1896, it is provided, among other things, as follows:

"When any person shall die intestate in this State, administration shall be granted to the widow of such person, if she make application for the same:" that said statute was in force and the law of said State of Tennessee at the date of the death of the said Charles Baker; and that plaintiff, Josie C. Baker, as the widow of the said Charles Baker, made application to the County Court of Hardin County, Tennessee, after the death of her said husband Charles Baker, to be appointed administratrix upon his estate, to-wit, at the November Term thereof, 1912, and was thereupon by said court duly and legally appointed and qualified as such administratrix which office she now holds and exercises by virtue of said appointment and qualification.

II.

226 That by the statute law of Tennessee, to wit, by Chapter 24 of the Acts of 1831 and Chapter 69 of the Acts of 1841, compiled in Section 2203 of the Code of 1858 of the State of Tennessee, and in Section 3935 of Shannon's Code of Tennessee of 1896, it is provided as follows:

"Letters testamentary or of administration may be granted upon the estate of a person who resided, at the time of his death, in some

other State or territory of the Union, or in a foreign country, by the County Court of any county in this State:

(1) Where the deceased had any goods, chattels, or assets, or any estate, real or personal at the time of his death, or where the same may be when said letters are applied for;

(2) Where any debtor of the deceased resides;

(3) Where any debtor of a debtor of the deceased resides, his debt being unpaid when the application is made;

(4) Where any suit is to be brought, prosecuted or defended in which said estate is interested;"

That said statutes were in force and the law of the said State of Tennessee at the date of the death of the said Charles Baker, and at the date of the appointment and qualification of plaintiff as his administratrix, as aforesaid; that at the date of the death of the said Charles Baker there were both personal and real estate belonging to the said Charles Baker located and situated in the County of Hardin, in said State of Tennessee, and said property, both real and personal, was in said county of Hardin in said state of Tennessee, at the time of the appointment and qualification of plaintiff as administratrix as aforesaid.

III.

Plaintiff therefore says that her appointment and qualification as administratrix of Charles Baker, deceased, by the County
227 Court of Hardin County, Tennessee, at its November Term, 1912, was legal and valid and fully authorized and warranted by the laws of said State, irrespective of the place of domicile of the said intestate Charles Baker; but she avers, as in her original petition in this case, that the said Charles Baker was at the time of his death, and all his life, a domiciled citizen of Hardin County, in the State of Tennessee.

Wherefore plaintiff prays as in her petition and for all other proper and equitable relief.

JOSIE C. BAKER, &c.,
By ROSS & ROSS,
JOHN A. PITTS,
C. C. GRASSHAM, Att'ys.

Afterwards, to wit at the same Term of the above named Court, on the 7th day of November, 1913, the following order was made herein, viz:

By agreement of parties the affirmative allegations contained in the reply of def't, Mrs. Augusta H. Baker, Administratrix heretofore filed to plaintiff's answer are controverted of record by the plaintiff. By agreement of parties the affirmative allegations contained in the answers of def'ts, heretofore filed to pl'ff's, amended petition No. 2 are controverted of record by the plaintiff. By agreement of parties the affirmative allegations contained in the rejoinder of def't, Baker, Eccles & Co., filed to plaintiff's reply are controverted of record by the plaintiff. By further agreement of parties the affirmative allegations contained in the answer of def't,

Mrs. Augusta H. Baker, Adm'x and adopted as her answer individually are controverted of record by the plaintiff.

228 Afterwards, to wit at the same Term of the above named Court, on the 6th day of December, 1913, the following order was made herein, viz:

The demurrer filed by defendant, Baker, Eccles & Co., to the 3rd, paragraph of the reply, filed by Mrs. Josephine Baker is upon the Court being advised overruled, to which the said def't, excepted. The demurrer of def't, Mrs. Augusta H. Baker, Adm'x, of Charles Baker, deceased to the 3rd, paragraph of plaintiff's answer to her intervening petition, is upon the Court being advised overruled, to which the said Mrs. Augusta H. Baker, Adm'x, excepted. The Court reserving final action on these demurrers and all other motions and demurrers filed herein until the action is finally submitted and heard. By agreement of parties the affirmative allegations of the answer of Mrs. Josephine Baker to the amended petition of Mrs. Augusta H. Baker, Adm'x, is controverted of record.

Afterwards, to-wit at the January Term, 1914, of the above named Court on the 6th day of January, 1914, the following order was made herein, viz:

This day came the parties by attorneys and filed written agreement herein relative to the taking of proof as to the laws of the State of Tennessee.

The following is the written agreement relative to the taking of proof as to the laws of the State of Tennessee, referred to in the foregoing order, viz:

This agreement between counsel for plaintiffs and defendants is made upon the following considerations and conditions, to-wit:

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1.

For the purpose of saving Court costs and expense in taking proof as to the laws of the State of Tennessee and the construction and application thereof by the highest Court of said State, as to the questions and matters involved in this law suit, and as to the questions and matters involved in the litigation that occurred in Tennessee, which is involved in this law suit.

2.

That neither the plaintiffs nor defendants nor either of the defendants, waive any right to testify in this case by reason of making this Agreement before giving such testimony.

3.

That the Annotated Code of Tennessee compiled, annotated and edited by R. T. Shannon of Nashville and published in 1896, may be admitted and read by plaintiffs and defendants and considered by the Court in this case as evidence of the laws of Tennessee now

and at the time of the litigation here involved and at the time of the litigation had in Tennessee that is in this suit involved.

4.

That the printed books and publications of cases adjudged in the courts of Tennessee may be admitted and read as evidence of the laws of Tennessee and the construction thereof by the highest Court of said State when made by such Court, both at this time and at the time of the litigation had in Tennessee now involved in this litigation, and prior thereto.

5.

That either plaintiffs or defendants may produce and read as evidence in this case, subject to competency and relevancy, a certified copy of any Court record or part thereof of the State of
230 Tennessee, certified under the seal of the Clerk of such Court, to have the same force and effect as evidence as if authenticated under and according to Chapter 45 of the Kentucky Statutes, title "Evidence" of Act of June 17th, 1893; subject, however, to the right of opposing counsel to take further evidence if they so desire in contradiction of the authenticity of such certified record. The exception for competency and relevancy under this Agreement is not to go to the certification of such record because of its failure to meet the requirements of the law with reference to proper certification, but is to go to all other parts thereof.

Given under our hands at Paducah, Kentucky, this the 2nd day of Jan'y, 1914.

BERRY & GRASSHAM,
E. W. ROSS,

Counsel for Plaintiffs.

WHEELER & HUGHES,
Counsel for Defendants.

Afterwards, to wit at the April Term, 1914, of the above named Court on the 29th day of April, 1914, the following order was made herein, viz:

This day the following agreement was filed herein, viz: "It is agreed between counsel for plaintiff and defendants that the depositions filed on both sides in this case are not to be questioned or excepted to by either plaintiff or defendants because of irregularity in form of caption, certificate or filing, as all of these matters are waived; the only requisite being that they show that the witness
was sworn before or at the time of giving the deposition.

231-233 This waiver does not apply to exceptions for competency or relevancy.

BERRY & GRASSHAM,
Counsel for Plaintiff.

WHEELER & HUGHES,
Counsel for Defendants.

Afterwards, to wit at the May Term, 1914, of the above named Court on the 15th day of June, 1914, the following order was made herein, viz:

By agreement of parties this action is submitted to the Court for trial, and leave is given all parties to file depositions and exhibits not already filed herein. Came defendants and filed exceptions to the deposition of Mrs. Josie C. Baker, herein.

The following is the exceptions of defendant- to deposition of Mrs. Josie C. Baker, referred to in the foregoing order, viz:

The defendants object and except to the reading of the deposition of Mrs. Josie C. Baker, as evidence in this action, because they say that the said Mrs. Josie C. Baker is not a competent witness and cannot, under the laws of Kentucky, testify in this case.

WHEELER & HUGHES,

For Def't.

Afterwards, to wit at the same Term of the above named Court, on the 16th day of June, 1914, the following order was made herein, viz:

This day came the parties hereto and filed an agreed stipulation as to the laws of the State of Tennessee, to be relied on as evidence herein.

* * * * *

234 Afterwards, to wit at the same Term of the above named Court, on the 23rd day of June, 1914, the following order was made herein, viz:

It is ordered by the Court that the order of submission, heretofore made herein, be and the same is hereby set aside. By agreement of counsel all affirmative matter in the pleadings and not specifically denied is now controverted of record, with leave given both sides to introduce new matter in evidence by way of avoidance and estoppel, and it is agreed that all depositions may be treated as filed and all Tennessee Laws and other papers and documents intended to be read as evidence herein be also treated as filed and considered read, whether actually read or not, and this action is submitted to the Court for trial.

Afterwards, to wit at the same Term of the above named Court on the 27th day of June, 1914, the following order was made herein, viz:

This action having been submitted to the Court for trial, upon the pleadings, exhibits and proof on file, and after hearing the argument of counsel, the Court being sufficiently advised, it is adjudged that plaintiff's petition be dismissed absolutely, and that the defendants do recover of the plaintiffs their costs herein expended, and for which an execution is awarded. To all of which the plaintiffs object and except and pray an appeal to the Court of Appeals which is granted. The plaintiffs produced to Court Bill of Exceptions and entered motion and moved the Court to approve and file same, and the Court being advised sustained said motion and signed said Bill

of Exceptions and ordered same to be filed and made a part of the record of this action.

235 The following is the Bill of Exceptions produced to Court by Plaintiffs, referred to in the foregoing order, viz:

Be it remembered, that on the trial and hearing of the above entitled action, the defendants offered in evidence copies of registration books or sheets, which appeared as exhibits in the deposition of John Rock, Polly Durrett, J. M. Troutman and George Brown, to the introduction of which exhibits, and to the consideration of same by the Court, the plaintiff did then and there object, and the Court sustained same but permitted each witness to state over objections of plaintiff that they had seen C. Baker's name on such registration books, each and all of which objections the Court overruled and to the overruling of which objection the plaintiff did then and there except, and still excepts; all of same were read and considered by the Court as evidence, and after same had been so read and considered by the Court the plaintiff moved to exclude same and all of same, which motion the Court overruled, and to which ruling of the Court the plaintiff did then and there except and object, and still excepts.

Upon the trial of the said case, the defendants offered in evidence, leaves from a hotel register of the records of some hotel at Dawson Springs, Kentucky, appearing as exhibits in the deposition of H. L. Holeman, to which the plaintiff did then and there object, and which objections were overruled by the Court, and to which ruling of the Court the plaintiff did *and* then and there except and still excepts.

Upon the trial of the said case, the defendants offered in the evidence of R. D. Wilson, over the objection of the plaintiff to the telling of the entry of a tax receipt, "Pd. in cash by C. Baker", also objecting to the evidence relative to the \$1.50 poll tax against Chas. or C. Baker, which objections were overruled by the Court and to which ruling of the Court the plaintiff did then and there except and still excepts.

236 That further, upon the trial of the said case, the plaintiff moved to exclude as evidence, the blank unsigned registration certificate and the pretended affidavit filed with the deposition of Herman Katterjohn, which motion to exclude was overruled by the Court, and to which ruling of the Court the plaintiff did then and there object and except, and still excepts.

Upon the trial of the case, plaintiff also objected to all of the testimony of E. W. Baker, Will Baker and S. D. Eccles, because said parties told of conversation, statements and acts done or omitted to be done by C. Baker, all of which objections the Court overruled, to which ruling of the Court the plaintiff did then and there object and except, and still excepts.

Plaintiff did, upon the presentation of the questions asked and answers of E. W. Baker and John Dipple, by the defendants, in an effort to impeach W. H. Patterson object to same because not restricted to the questions asked said Patterson; the Court overruled

said objections, to which ruling of the Court plaintiff did then and there except, and still excepts.

Be it further remembered, that upon the trial of the same case, Shannon's Code of Tennessee, and any other law of Tennessee desired to be read by either party without proving same as required by law, now in use, was read as evidence and the Equity Rules or Chancery Rules of the Chancery Court of Tennessee, are to be copied into the evidence as part of the Bill of Evidence and exceptions, as read.

This is ordered to be entered and recorded on the record of this Court, and shall be copied by the Clerk as part of the record of this case, and shall serve as a Bill of Exception herein, on the part of the plaintiff.

W. M. REED, *Judge.*

237 Afterwards, to wit, on the 12th day of August, 1914 the following agreement was filed in the Clerk's office of the above named Court, viz:

It is agreed between the plaintiffs and defendants in the above styled action, that all writings and exhibits filed with the pleadings and depositions in this case, and otherwise introduced and read as evidence, may be taken from the files and attached to the record that is being prepared for the Court of Appeals, and that all of same may be used and read as evidence in the Court of Appeals in said record as though copied therein and certified to. It is also agreed between the plaintiffs and defendants, that all cases and statutes opinions read from Tennessee Reports, as evidence or in the presentation and argument of this case, and any other applicable to the case, may be read in the Court of Appeals by both sides, as though same were copied in the record as a part of the evidence of the case, as to the law and the Court's Construction thereof in Tennessee, insofar as it affects any issue in the case.

It is further agreed by the parties, that this Agreement may be copied by the Clerk into the record, as though same had been filed in open Court; all of which is done for the purpose of saving costs in this action.

BERRY & GRASSHAM,
Attorneys for Plaintiffs.
WHEELER & HUGHES,
Attorneys for Defendants.

238 Afterwards at a Court of Appeals held in and for the Commonwealth of Kentucky, at the Capitol, in the City of Frankfort, on the 21st day of September 1914, the following orders were entered, viz:

BAKER, &C.,
VS.
BAKER, ECCLES & COMPANY.

McCracken.

Came the parties by counsel and filed an agreement, and on motion, and by consent both parties are given thirty days to file briefs.

Came the parties and filed grounds and jointly moved the Court for an order directing the Clerk of the lower court to transmit and certify the original exhibits referred to, motion submitted.

Came the parties by counsel and filed grounds and jointly moved the Court to order an oral argument herein, which motion is submitted.

Afterwards at a Court of Appeals held as aforesaid on the 23rd day of September, 1914, the following order was entered to-wit:

BAKER
VS.
BAKER, ECCLES & COMPANY.

McCracken.

The Court being sufficiently advised on appellant's motion and by consent it is ordered that the Clerk of the McCracken Circuit Court certify and transmit to the Clerk of this court the following original exhibits in this case:

239 Registration book "Rock"; copy of registration book "Allen"; check "Wilson #1"; tax receipt "Wilson #2"; tax receipt "Wilson #3"; account of Charles Baker, "Wilson #4"; book "Troutman" book "Brown"; copy of affidavit "Katterjohn"; copy of receipt "Anderson"; copy of tax bill #206; copy of poll tax receipt #201; copy of treasurer's receipt, stub #58; copy of poll tax bill #152; copy of index book, item #16; Letter "Will B. Lydon"; letter from G. W. Lear to Mrs. Josephine Baker; Exhibit "LL", letters testamentary issued to Charles Baker, as executor of Mrs. Annie Barnhill; page of register from register of Arcadia Hotel "Exhibit #1"; page of register from register of Arcadia Hotel "Exhibit #2"; page of register from register of Arcadia Hotel "Exhibit #3"; page of register from register of Arcadia Hotel "Exhibit #4"; page of register from register of Arcadia Hotel "Exhibit #5"; page of register from register of Arcadia Hotel "Exhibit #6"; letter from N. L. Holeman to Mrs. Charles Baker, "Letter"; Code of Tennessee, annotated R. T. Shannon 1896:

BAKER
vs.
BAKER, ECCLES & COMPANY.

McCracken.

The Court being sufficiently advised the motion for oral argument is sustained and said case is ordered to be passed for that purpose.

240 Afterwards at a Court of Appeals held as aforesaid on the 9th day of October 1914, the following order was entered herein, to-wit:

BAKER
vs.
BAKER, ECCLES & COMPANY.

McCracken.

Came the Circuit Clerk and filed a response to the order directing the transmission of the original exhibits herein together with the exhibits called for.

Afterwards at a Court of Appeals held as aforesaid on the 21st day of January 1915, the following order was entered herein, to-wit:

BAKER, &C.,
vs.
BAKER, ECCLES & COMPANY.

McCracken.

This cause coming on to be heard was argued by Charles K. Wheeler for appellee and C. C. Grassham for appellant, and submitted.

Afterwards at a Court of Appeals held as aforesaid on the 11th day of February 1915 the following judgment was entered, to-wit:

Mrs. JOSIE BAKER, &c., Appellants,
vs.
BAKER, ECCLES & COMPANY, &c., Appellees.

Appeal from McCracken Circuit Court.

The Court being sufficiently advised it seems to them there is no error in the judgment herein.

241 It is therefore considered that said judgment be affirmed, which is ordered to be certified to said Court:

It is further considered that appellees recover of appellants their costs herein expended.

On the same day, to-wit, February 11th, the Court of Appeals of Kentucky delivered the following opinion in this case, to-wit:

242 Court of Appeals of Kentucky, February 11th, 1915.

Mrs. JOSIE BAKER et al., Appellants,

v.

BAKER, ECCLES & COMPANY et al., Appellees.

Appeal from McCracken Circuit Court.

Opinion of the Court by Judge Carroll.

This litigation, concerning the descent and distribution of the personal estate of Charles Baker, and which involves one important and disputed question of fact and several interesting questions of law, arose in this way: Charles Baker was born and lived for a number of years at or near the town of Savannah, in Hardin County, Tennessee. In 1901 he came to Paducah, Kentucky, and engaged in the mercantile business, in which business he remained at Paducah from that time until his death in 1912.

In September, 1912, while enroute to his old home in Tennessee for a visit he died while on board a steamboat in Humphrey County, Tennessee, leaving surviving, as his only heirs at law, his
243 widow, the appellant, Mrs. Josie C. Baker, his mother, the appellee, Mrs. Augusta H. Baker, and a brother E. W. Baker.

At the time of his death he owned real property situated in Hardin County, Tennessee, also some personal estate located in that County, as well as valuable personal estate having a situs in Paducah, Kentucky, consisting of shares of stock in the Paducah Corporation of Baker, Eccles & Company and a large debt against this corporation.

In November, 1912, his widow applied to the County Court of Hardin County, Tennessee, for letters of administration on the estate of her husband. The proceedings in this court, which were entirely ex parte, were had on the motion of the widow. The request was granted and the order of the Hardin County Court appointing her administratrix recites that "at the time of his death the residence of the said Charles Baker was in Hardin County, Tennessee, and that he left therein estate, goods and chattels, rights and credits, the granting of the administration whereof belongs to this court; and Mrs. Josie C. Baker, the widow of the said Charles Baker, deceased, having applied for letters of administration on his estate, and she having a right thereto under the laws of the State of Tennessee, and the Court being satisfied of her right to so administer, it is therefore ordered and decreed by the Court that said application made by the said Mrs. Josie C. Baker for the granting of letters of administration on said estate to her be granted."

At another term of this County Court held in December,
244 1912, it appears that Mrs. Baker presented a settlement of her accounts as administratrix, and thereupon this order was made: "It further appearing to the Court, from proof introduced

to and heard by the Court, that the said Charles Baker died intestate, and at the time of his death was a resident of Hardin County, Tennessee, that he left no children or descendants of such surviving, but left surviving his widow, the said Mrs. Josie C. Baker, and, under the laws of the State of Tennessee, the said Mrs. Josie C. Baker, as the widow of the deceased, is entitled to all of the surplus personal property of the estate, and the Court being of the opinion that she is entitled to receive and hold as her own individual property all of the surplus personalty of the estate after payment of the debts of the same and the expenses of the administration, so adjudges and decrees."

It further appears from the settlements and orders of this court that the debts due by the deceased were few in number and trifling in amount, and that the widow as administratrix had in her possession certificates of stock owned by the deceased in the corporation of Baker, Eccles & Co., of Paducah, of the value of \$27,000, and also some other personal assets of small value. On this showing it was ordered and adjudged by the court that Mrs. Baker as administratrix transfer and deliver to herself as the widow of the deceased all of the personal estate in her possession, including these shares of stock, and this was done as appears from the settlements and receipts filed in this court.

It will be observed that the order appointing Mrs. Baker
245 administratrix recites that the court heard proof on the subject of the place of the intestate's residence at the time of his death, but the record does not disclose what character of proof was heard, nor does it appear from the record that his mother or any other persons interested in his estate or its distribution were in any manner parties to this county court proceeding or had any notice of it.

Subsequent to these proceedings in the county court, and on Dec. 28, 1912, Mrs. Josie C. Baker individually and as administratrix of Charles Baker filed in the chancery court of Hardin County, Tennessee, her petition in equity, or bill of complaint, as it is called in the Tennessee practice, against Mrs. Augusta H. Baker, the mother, and E. W. Baker, the brother of the deceased, who were then residents of Paducah, Ky., and also against several persons who were residents of Hardin County, Tennessee. In her petition she set out her appointment as administratrix of the estate of Charles Baker in the Hardin County Court and averred that her husband died intestate, a resident of and domiciled in Hardin County, Tennessee, leaving surviving him as his sole heir and distributee his widow, and as his only other heirs at law his brother, E. W. Baker, and his mother, Mrs. Augusta Baker.

The petition further set up her ownership of the stock in the Paducah corporation of Baker, Eccles & Co., the interest of the deceased in several tracts of land in Tennessee, and averred that Mrs.

Augusta Baker was asserting some claim and interest in the
246 Tennessee lands owned by Charles Baker, and also to one-half of the personal estate left by him, upon the theory that he died a resident of the State of Kentucky, and, under the laws

of that State, his mother was entitled to one-half of his surplus personal estate.

The prayer of her petition was that Mrs. Augusta Baker and E. W. Baker be brought before the court in the manner provided for non-residents and be required to assert whatever claim they might have to the estate left by the deceased. She further prayed that it be adjudged that Charles Baker died a resident of the State of Tennessee and that she as his widow was the sole distributee and entitled to all of his personal estate after the payment of his debts, and for all other and proper relief.

On the filing of this petition an order of publication was made citing Mrs. Augusta Baker and E. W. Baker, as non-residents, to make defense to the petition on a named day and it is not questioned that these defendants were regularly proceeded against under the law of Tennessee, as non resident defendants, although they did not appear in the action.

On April 7, 1913, an order was entered by the court reciting that these non-resident defendants were regularly before the court by publication and having failed to make any defense, the petition under the Tennessee practice was taken for confessed as to them. It also appears that in April the depositions of several witnesses were taken for the plaintiff for the purpose of establishing among

other things that Charles Baker was a resident of Tennessee
247 at the time of his death.

On May 2, 1913, a judgment was entered in this chancery case adjudging that "the said Charles Baker at the time of his death was a citizen of and had his domicile at Savannah, Tennessee; that at no time was he a citizen of and domiciled at Paducah, Kentucky; that all of his life he was a citizen of and had his domicile at Savannah, Tennessee, and the Court so adjudges and decrees."

It was further adjudged that his widow was the sole distributee, and as such entitled in accordance with the laws of Tennessee to the whole of the surplus personal property of which he died the owner. She was further adjudged entitled to the 270 shares of stock in the Baker, Eccles & Co. corporation and the accumulated profits thereon.

This is all that need be said at this time respecting the proceedings in the Tennessee courts and the orders and judgments therein made.

Turning now to the Kentucky proceedings it appears that on November 27, 1912, Mrs. Augusta Baker, mother of Charles Baker, was granted letters of administration on his estate by the County Court of McCracken County, Kentucky, and on December 3, 1912, as such administratrix she filed a petition in the McCracken Circuit Court for a settlement of the estate of Charles Baker, and to this petition his widow and Baker, Eccles & Co. were made defendants. In this petition it was averred that Charles Baker died a resident of McCracken County, Kentucky, the owner of shares of

248 stock in the Baker, Eccles & Co. corporation of the value of \$27,000, together with accumulated profits thereon, and some other articles of personal property, and also a claim of several thousand dollars against Baker, Eccles & Co. She also set up that herself

and the widow were the only heirs at law of the decedent entitled to an interest in his estate, and that she was entitled to one-half of his personal estate after the payment of debts and the widow to the other one-half.

In this action Mrs. Josephine Baker was proceeded against as a non-resident defendant, but whether she was brought before the court by virtue of these proceedings is a question that will later be disposed of. For the present it is sufficient to say that Mrs. Josephine Baker did not appear in this action, and on February 13, 1912, a judgment was rendered by the McCracken Circuit Court adjudging that Charles Baker died a resident of McCracken County, Kentucky, and that his mother, Mrs. Augusta Baker under the Kentucky law was entitled to one-half of the surplus personal estate of the deceased and Mrs. Josephine Baker, as his widow, to one-half thereof.

In the judgment Baker, Eccles & Co. were directed to cancel the 270 shares of stock in the corporation issued to Charles Baker and to re-issue one-half of these shares to Mrs. Josephine Baker and to re-issue the other half to Mrs. Augusta Baker. The remaining personal property found to be owned by the deceased after the payment of debts was also directed to be divided equally between these two persons.

249 In June, 1913, Mrs. Josephine Baker, individually and as administratrix of Charles Baker, filed a suit in the McCracken Circuit Court against Baker, Eccles & Co., in which, after setting up the orders and judgments made in the Tennessee courts and her sole ownership of the personal estate of the deceased by virtue thereof, she prayed that Baker, Eccles & Co. be required to transfer to her individually the 270 shares of stock to which she was adjudged entitled by the Tennessee chancery judgment, and also for judgment against it for \$11,429.17, in which amount she alleged it was indebted to her husband at the time of his death. With this petition she filed certified copies of all the proceedings had in the Tennessee courts, together with a copy of the evidence heard in the chancery court of Tennessee.

To this petition Baker, Eccles & Co. filed its answer putting in issue all the averments of the petition, and also relied on the judgment of the McCracken Circuit Court in the case of Mrs. Augusta Baker heretofore mentioned.

Mrs. Augusta Baker came into this suit by an intervening petition in which she averred that Charles Baker died a resident of the State of Kentucky and that under the laws of this State and by virtue of the judgment of the McCracken Circuit Court in the suit brought by her, she was entitled to the interest in the estate of Charles Baker decreed to her by the McCracken Circuit Court judgment, which she averred was binding and conclusive upon Mrs. Josephine Baker. She further put in issue the validity of the orders and judgments made in the Tennessee County Court, as well as in the chancery court of Tennessee, and averred that the judgments in each of these courts in so far as they determined that Charles Baker died a resident of the State of Tennessee and that his widow

250

was entitled to the whole of his personal estate after the payment of his debts were void, because neither of these Tennessee courts had jurisdiction to make orders or judgments so declaring, and she relied on the judgment of the McCracken Circuit Court in the suit brought by her as finally determining not only the domicile of Charles Baker at the time of his death but the devolution of his estate.

After motions to strike out parts of the petition of Mrs. Augusta Baker, as well as demurrers thereto had been overruled, a reply was filed controverting the affirmative averments of the pleading of Mrs. Augusta Baker, and it was further averred that the judgment rendered in the McCracken Circuit Court in so far as it attempted to determine the rights of Mrs. Josephine Baker was void, because she was not before the court by either actual or constructive service of process.

When the pleadings had been made up, a large amount of evidence was taken on the issue as to the residence of Charles Baker at the time of his death, and thereafter the case having been submitted for hearing, it was adjudged that the petition of Mrs. Josephine Baker be dismissed, and from that judgment this appeal has been prosecuted.

From this necessarily extended statement of the proceedings in the Tennessee and Kentucky courts it will be seen that the real question at issue in this case is whether the widow of Charles Baker is
 251 entitled to the whole of his surplus personal estate under the Tennessee law or his mother, Mrs. Augusta Baker, to one-half of it, under the Kentucky law, and that the solution of this question depends upon the residence of Charles Baker at the time of his death and the force and effect to be given to the Tennessee and Kentucky judgments.

In behalf of Mrs. Josephine Baker the argument is made that the Tennessee judgments finding that Charles Baker died a resident of Tennessee are conclusive of this question whether in fact he died a resident of that State or not, and this being so, his widow, under the law of Tennessee, about which there is no dispute, was and is entitled to the whole of his surplus personal estate. It is further contended in this behalf that the Kentucky judgment rendered by the McCracken Circuit Court in the case of Mrs. Augusta Baker, in so far as it undertook to determine Mrs. Josephine Baker's interest in the estate of her husband, was void, because she was not before the court either by actual or constructive service.

For Mrs. Augusta Baker the argument is made that Charles Baker died a resident of the State of Kentucky, and therefore the Tennessee courts had no jurisdiction to determine that he died a resident of Tennessee or to distribute his estate under the laws of Tennessee, and, further, that the Kentucky judgment determining the rights of the widow and the mother is and was a valid judgment, and, as
 252 it has not been modified or vacated or any appeal prosecuted therefrom, it finally determined the rights of the parties.

Other questions upon which these respective arguments rest will be noticed in the course of the opinion.

Taking up first the validity and effect of the judgment of the Mc-

Cracken Circuit Court, which, as stated, determined that Baker died a resident of Paducah, Kentucky, and that his mother, under the laws of this State was entitled to one-half of his surplus personal estate and his widow the other one-half, the conclusion we have reached with respect to this judgment renders it unnecessary to discuss its effect or do more than set forth the reasons that have brought us to the conclusion that it is void in so far as it affects the rights of the widow.

In the suit in which this judgment was obtained the widow was proceeded against as a non-resident defendant. She was not actually served with process, nor did she in any manner enter her appearance to this action; so that unless the warning order proceedings were sufficient to bring her before the court on constructive service, she cannot be treated as being in any manner affected by this judgment; in other words, her status is the same as if she had not been made a party to this suit.

Without setting out in full sections 57-61 of the code covering the subject of constructive service, we think it sufficient for the purposes of the question we have to say that section 57 of the code provides that a warning order may be made upon an affidavit showing that the defendant is a non-resident of this State and believed to be absent therefrom, and also stating in what country the defendant resides or may be found and the name or place where a post office is kept nearest to the place where the defendant resides or may be found.

Other sections of the code provide that when this affidavit is made the clerk of the court shall make an order warning the defendant to defend the action on the first day of the next term of the court which does not commence within sixty days after the making of the order. In other sections it is provided that the clerk at the time of making the warning order shall appoint an attorney whose duty it shall be to inform the defendant of the pendency and nature of the action and report to the court the result of his efforts.

In this suit no separate warning order affidavit was made, nor was it necessary that one should have been made if the petition itself, which was properly verified, contained the matter which should have been embraced in an affidavit. The verified petition upon this point averred that "Mrs. Josephine Baker has left the State of Kentucky and is now a non-resident thereof, and she resides at Savannah, in the State of Tennessee, at which place a post office is kept and which is the nearest post office to the residence of said Mrs. Josephine Baker."

When the petition containing this affidavit was filed, a warning order, in due form, was made and a warning order attorney was appointed as provided in the code, who, before the judgment was rendered, filed in proper form and manner a report showing that he had written Mrs. Baker at the address named, informing her of the pendency and nature of the action against her, but had not received any reply. So that the defect, if any, in these warning order steps consists in the insufficiency of the affidavit upon which the warning order was made. This affidavit is the basis of

warning order proceedings and no warning order can be made by the clerk or attorney appointed under it until the affidavit provided by the code has been made.

It will be observed that the affidavit conforms strictly to the code requirements except that it fails to aver that Mrs. Josephine Baker is believed to be absent from the State. It sets out that Mrs. Baker has left the State and is a non-resident thereof, and gives the place of her residence in the State of Tennessee and her post office in that State, but there are no words in the affidavit that supply the place of the averment that she was believed to be absent from this State at the time the affidavit was made. And we think this averment was indispensable to the sufficiency of the affidavit and that in its absence the clerk had no authority to make the warning order or to appoint the attorney. In cases like this it is alone the

255 fact that the defendant is absent or believed to be absent from the State at the time the affidavit is made that authorizes the proceedings against him as a non-resident. If the defendant is not absent or believed to be absent from the State, he cannot be proceeded against as a non-resident and accordingly the court would have no jurisdiction on constructive service to enter a judgment affecting his rights. This is so because it is the making of the warning order that commences the action, and the clerk has no authority to make this order except on a sufficient affidavit.

Admitting this to be true it is said that we should presume that the defendant was absent or believed to be absent from the State when the affidavit was made from the averment that the defendant was a non-resident of the State and resided in another State. But we do not think so. A defendant might be, legally speaking, a non-resident and yet be actually in the State and in the county where the suit was brought when the affidavit and warning order were made: *Redwine v. Underwood*, 101 Ky., 190; *Warrick v. McCormick*, 150 Ky., 800.

The argument is also made that, as this is a collateral attack on the validity of the judgment of the McCracken Circuit Court, every presumption must be indulged that the proceedings in that court were regular and every step necessary to give it jurisdiction to render the judgment was properly taken.

256 It is true that every presumption must be indulged to support a judgment against collateral attack, for in this respect there is a well defined and distinct difference between a direct and a collateral attack on a judgment. It is also well settled that on collateral attack a judgment cannot be successfully assailed unless it is void for a want of jurisdiction in the court to render the judgment that appears upon the record: *Bamberger v. Green*, 146 Ky., 258; *Maysville R. R. Co. v. Ball*, 108 Ky., 241; *Dennis v. Alves*, 132 Ky., 345.

We are also clear that the attack made on this Kentucky judgment was a collateral attack as a direct attack on a judgment can only be made in the manner pointed out in the code; that is to say, by prosecuting an appeal or by proceedings had under the Code and in the manner pointed out in sections 340, 414 and 518 for the modi-

fication or vacation of judgments. An attack made on a judgment in any other way is a collateral attack: Black on Judgments, volume 1, section 252; Vanfleet on Collateral Attack on Judicial Proceedings, Sec. 2; Duff v. Hagins, 146 Ky., 792.

Being then a collateral attack, will we presume that all the proceedings taken by the court necessary to sustain the validity of the judgment were regular? The rule upon this subject is that if the record is ancient or it does not affirmatively show everything that was done, the presumption will be that the things it does not show have been done in such manner as that if they appeared in the record there would be no defect and so the judgment on col-

257 lateral attack will be treated as erroneous, but not void, and consequently not subject to collateral attack. But if the record is fresh and affirmatively shows everything in such a way as that no presumption can be indulged in that something was done that does not show in the record, then the record must control, for there is no room to presume that something else may have been done that would cure the defect, and in this state of case if the defect is substantial the judgment is void and may be attacked collaterally. Supporting this rule reference may be had to *Hynes v. Oldham*, 3 T. B. Mon., 266; *Benningfield v. Reed*, 8 B. Mon., 102; *Newcomb v. Newcomb*, 13 Bush, 544; *Carr v. Carr*, 92 Ky., 552; *Wilson v. Teague*, 95 Ky., 47; *Sears v. Sears*, 95 Ky., 173; *Segal v. Reishert*, 128 Ky., 117; *Steel v. Stearns Coal & Lumber Co.*, 148 Ky., 429; *Kreiger v. Sonne*, 151 Ky., 739.

The rule, however, favoring all presumptions that can be indulged in to sustain the validity of a judgment on collateral attack cannot be here invoked because the whole of a new record is here, and it affirmatively shows the absence of the conditions upon which the court had jurisdiction to render a judgment affecting the rights of a non-resident, and this being so this judgment as to the widow must be treated as void: *Green's Heirs v. Breckinridge's Heirs*, 4 T. B. Mon., 541; *Brownfield v. Dyer*, 7 Bush, 505; *Arthurs v. Harlan*, 78 Ky., 138; *Grigsby v. Barr*, 14 Bush, 330; *Clark v. Raison*, 126 Ky., 486.

258 But the invalidity of this judgment does not, as we will presently attempt to show, have the effect claimed by counsel for the appellant, or strengthen the case for the widow.

Taking up next the validity and effect of the Tennessee County Court Judgment, we are clearly of the opinion that so much of this judgment as undertook to adjudicate that the residence of Charles Baker was in Hardin County, Tennessee, at the time of his death, and as a legal consequence of this his widow, under the laws of Tennessee, was his sole distributee and entitled to the whole of the surplus of his personal estate, was void so far as the rights of his mother were attempted to be affected. In view of the admitted fact that Charles Baker, at the time of his death, owned both real and personal estate in Hardin County, Tennessee, there can be no doubt that under the laws of Tennessee the County Court of Hardin County had power and jurisdiction to grant letters of administration on his estate to his widow. This jurisdiction and power attached by virtue

of the fact that he owned real and personal property in that county and was not dependent on the condition that he died a resident of that county. If he was, in fact, at the time of his death a resident of McCracken County, Kentucky, the Tennessee County Court would, under the circumstances, have had the same power and jurisdiction to grant letters of administration on his estate as if
 259 he had admittedly died a resident of Hardin County, Tennessee.

But it is one thing to grant letters of administration and another very different thing to determine the place of the intestate's residence for the purpose of affecting the devolution of his estate. The granting of letters of administration alone would not in any manner affect the devolution of his estate or determine the distributees or the shares to which they were entitled. The administrator would merely hold the estate in trust for the benefit of the persons entitled to the estate, with the duty of turning the estate over to such persons when their right was established and in the time and manner provided by the Tennessee law. So that the mother of Charles Baker could not and does not complain of so much of the Tennessee County Court judgment as granted letters of administration upon his estate.

But manifestly this Tennessee County Court could not, in this ex parte proceeding or application, instituted by the widow, to which his mother was not a party, on any kind of service or publication, have jurisdiction or power to adjudicate that the deceased was a resident of the State of Tennessee and thereby conclusively determine that his widow was entitled to the whole of his surplus personal estate and exclude his mother from participation. We do not know
 260 of any authority that would permit an interested party to be deprived of his right to make defense, or that would conclude him by a judgment rendered in the manner of this Tennessee judgment. Here we have two contestants for the personal estate of Charles Baker, each of them having at least some ground upon which to assert her right to an interest in his estate, and yet an inferior court, in the absence of one of the parties, undertakes to and does adjudge a fact upon which the other party becomes, by virtue of a local statute, entitled to the whole of this estate. It seems to us that a mere statement of this proposition is sufficient to conclusively refute the effect claimed for this County Court judgment. It is fundamental law, recognized, as we think, by every court, that no person can be deprived in a legal proceeding of property to which he has or asserts claim unless he has been given notice in the manner provided by law, which may, generally speaking, be said to be actual or constructive notice of the pendency of the suit and that his right to the property is about to be determined and he must defend if he desires to save it.

Out of numerous authorities supporting these general statements we think it sufficient to refer to the leading case of *Pennoyer v. Neff*, 95 U. S., 714, 24 L. Ed., 565. Another case involving a question very much like this was before the court in the case of *Overby v. Gordon*, 177 U. S., 214, 44 L. Ed., 741. In the *Overby* case, which

involved a contest over the distribution of the estate of one Haralson, it appears from a statement of the facts that a Mrs. Gordon instituted proceedings in an appropriate court of the District of Columbia for the purpose of probating the last will of Haralson and to obtain letters of administration. In this proceeding an issue was made as to the place of residence of the deceased at the time of his death, and there was introduced a record showing that administration on his estate had been granted by a probate court of the State of Georgia. The District of Columbia court ruled that he died a resident of the District of Columbia and denied the conclusive effect of the Georgia Proceedings. In considering the case the Supreme Court said:

"The single question for consideration is, was the grant of letters of administration by the court of ordinary of De Kalb County, Georgia, competent evidence upon the issues tried in the Supreme Court of the District of Columbia respecting the domicile of the decedent at the time of his death?"

The order of the Georgia court granting letters of administration recited "that Haralson died a resident of De Kalb County, Georgia," and it was contended that this was a conclusive adjudication of the place of his residence, notwithstanding the fact that the proceedings were ex parte and that no notice to other interested parties was given sufficient to bring them before the court for the purpose of determining their rights. And the court said: "From the record of the proceedings instituted in the De Kalb County Court it is apparent that the ultimate purpose was to adjudicate upon and decree distribution of the estate of the deceased, the appointment of an administrator being a mere preliminary step in the management and control by the court of assets of the estate. The question of domicile would seem to have been important only as establishing the particular court of ordinary which was vested with jurisdiction to administer the assets within the State of Georgia. The subject-matter or res, upon which the power of the court was to be exercised, was, therefore, the estate of the decedent."

Then, after an extended discussion of the question, the court said: "We are of the opinion that the De Kalb County Court possessed the power to determine the question of domicile of the decedent for the purpose of conclusively adjudicating the validity within the State of Georgia of a grant of letters of administration, but that it did not possess the power to conclusively bind all the world as to the fact of domicile, by a mere finding of such fact in a proceeding in rem. In other words, proceedings which were substantially ex parte can not be allowed to have greater efficacy than would a solemn contest inter partes, which would have estopped only actual parties to such contest as to facts which had been or might have been litigated in such contest."

"Our conclusion being that the adjudication of the fact of domicile in Georgia made in the grant of letters by the De Kalb County Court, and which was not made in a contest inter partes, was of no probative force upon the question of domicile in a contest in a court of the District of Columbia in the course of proceedings for the

administration of assets within said District, it results that the Supreme Court of the District did not err in excluding the transcript in question whether tendered as evidence conducing to establish or as conclusively fixing the domicile of the deceased." To the same effect is *Thormann v. Frame*, 176 U. S. 350, 44 L. Ed. 500.

If in a proceeding like the one had in this County Court the rights of persons not in any manner parties to the proceeding could be conclusively determined and property to which they asserted claim be taken from them in the manner here attempted, it would follow that in all cases judgments might go affecting the rights of persons who were not parties to the proceedings, and this practice would of course be at war with the established doctrine that no person can be deprived of his property without opportunity to be heard in his defense. *Black on Judgments*, Vol. 1, sec. 226; *Hovey v. Elliott*, 169 U. S. — 42 Law Ed. 215.

264 Our conclusion, therefore, is, upon this branch of the case, and the adjudication of the Tennessee County Court that Baker died a resident of Tennessee and accordingly his widow was entitled to the whole of his surplus personal estate, was absolutely void and open to attack in any court in which a claim under it might be asserted. *Spencer v. Parsons*, 89 Ky., 577; *Francis v. Lilly*, 124 Ky., 230; *Carpenter v. Moorelock*, 151 Ky., 506; *Black on Judgments*, vol. 2, section 894.

Passing now to the chancery court judgment, we find that under the laws of Tennessee the chancery court occupies substantially the same position that circuit courts do in this State. In other words, Tennessee chancery courts are courts of general jurisdiction, and accordingly have the power to settle estates of deceased persons and determine the rights of conflicting claimants thereto, as well as all other matters that may be necessary in adjudicating the rights of the parties. So that the chancery court had jurisdiction to adjudge that Baker died a resident of Hardin County, Tennessee, and that his widow, under the law of Tennessee, was entitled to the whole of his surplus personal estate. Admitting all this, and, further, that his mother was properly before the court on constructive service, the only remaining question is the effect to be given to this judgment of the chancery court when it is attempted to take under it personal property having a situs in this State. We use the expression "having a situs in this State" because we think Baker died a resident of Kentucky, and accordingly the personal estate owned by him at his death and here in controversy had a situs in this State.

265 On this issue counsel for the widow urgently insist that this Tennessee chancery judgment, standing as it does unmodified and unreversed, conclusively settled not only in Tennessee but everywhere every question determined by it affecting parties who were before the court by actual or constructive service, and therefore its operation and effect could not be called in question when suit was brought on it in this State.

That it had in the State of Tennessee, where it was rendered, and as to property situated in that State, the conclusive effect claimed for it, may be readily admitted, but whether it shall have that effect

as to property having a situs here is another question. It is a general rule of law that judgments of courts having jurisdiction of the person and subject-matter of the action are conclusive until modified or vacated in the manner provided by the law of the State in which they are rendered upon the rights of all the parties who were before the court by such manner of process as would give the court jurisdiction of their person. But this rule is not without exceptions, and one of these exceptions arises, as we think, when a court undertakes to determine the descent and distribution of the estate of a person situated in another State so as to affect the rights of interested parties who have not been brought before the court by actual service of process and who have not entered their appearance. If Mrs. Augusta Baker, the mother, had entered her appearance in this

266 Tennessee action or had been brought before the court by actual service of process, she would be conclusively bound by the judgment in its effect upon property everywhere until she procured its modification or vacation in some manner allowed by the law of Tennessee. But, as she was only before the court by constructive service, we do not think the Tennessee judgment conclusively determined her right to the personal estate of Charles Baker that was situated in this State, although it did so determine it as to the property that had a situs in Tennessee, and this determination remains conclusive until it is overthrown by appropriate proceedings in the courts of Tennessee.

When suit was brought on that judgment in this State for the purpose of taking hold of the personal estate situated in this State, we think Mrs. Augusta Baker had the right to question the extra-territorial effect claimed for it. Or, in other words, to contend in opposition to the judgment that she was entitled to her share under the laws of this State of the personal estate of her son having a situs in this State at the time of his death; leaving, however, in full force and effect the judgment so far as it operated upon the estate of Baker situated in the State of Tennessee at the time of his death, and giving to it in that State the full faith and credit to which it was entitled under the laws of Tennessee.

An interesting and sound discussion of the effect of the judgment of a sister state rendered on constructive service when attempted to be made operative upon property located in another State, may be found in *Williams v. Preston*, 3 J. J. Mar., 600. In that case

267 the court said: "It appears from the record that the appellant was 'no inhabitant' of Virginia, when the suit in chancery was instituted. * * * Taking it therefore as conceded that he was not only a resident but a citizen of Kentucky, we are of opinion that the decree against him can have no other effect than to operate on his property which was within the jurisdictional limits of Virginia, and to attach which the suit in chancery was instituted.

"No court in Virginia could rightfully render a decree 'in personam' against a citizen of Kentucky, unless by being in Virginia and served with process, or by entering his appearance, he gave the court personal jurisdiction. Either the person or some

of his property must be within the jurisdiction of a court before it can render any decree against the person or thing. The property does not give jurisdiction over the person. If a citizen of Kentucky own property in Virginia that property is subject to the laws of Virginia and her courts may have jurisdiction over it. But he, whilst he shall remain in Kentucky, is not subject to the laws of Virginia, nor can her courts exercise any jurisdiction over him, except so far as to reach his property in Virginia." * * *

"So the court of chancery of Virginia had jurisdiction over the chose in action of the appellant, which was attached; but its power extended no farther. It could sequester the property and subject it to the payment of the appellee's debt; but it had no power to render a decree against the appellant affecting him otherwise than by acting on his property in Virginia." To the same effect
268 are: *Harris vs. John*, 6 J. J. Mar., 257; *Brand v. Brand*, 116 Ky., 785; *Downs v. Downs*, 123 Ky. 405; *Ely v. Hartford Life Ins. Co.*, 128 Ky., 799; *Freeman on Judgments*, sections 564, 584; *Black on Judgments*, sections 794, 795, 904 and 905.

In view of these authorities and many others that might be cited, we think it safe to state it as a rule of general application that a court of one state has no jurisdiction to enter a judgment on constructive service affecting real or personal property situated in another state, its jurisdiction being confined to affecting by its judgment property situated in the state where the judgment was rendered.

This being so, it seems to us that there is no sound reason, so far as the rights of the parties to this suit are concerned, why this rule should not be applied in this case. The attempt is here made to affect property situated in this state by the Tennessee judgment to the same extent as if it was sought to affect it by a judgment in an attachment suit or a suit to enforce mortgage or other lien obtained in the Tennessee court on constructive service.

But it is said by counsel that as the chancery court had unquestioned jurisdiction to determine that Baker was a resident of Tennessee, and as that was within the proper scope of the suit brought, the adjudication that he was a resident is conclusive upon this subject, and therefore it follows as an inevitable result of this that
269 the widow is entitled to all of his surplus personal estate no matter where situated, if it were such character of personal estate as had a situs at the residence of the owner. It may be admitted that the question of Baker's residence was a proper subject for adjudication in that suit, but this adjudication should not be given extra-territorial effect when to do so would be to determine the status of property having a situs in this state.

It would be the merest evasion of the principle we have announced to say that a court on constructive process could not directly settle the descent and distribution of property in another state, but might conclusively but indirectly settle it by adjudging another point upon which the devolution of the foreign estate would depend, and this is precisely the effect here claimed for this Tennessee judgment. If this were a sound rule, then, for example, a judgment on construc-

tive service might be rendered against a citizen of one state by a court of another state to the effect that he had signed and delivered the note sued on and it was a just and existing debt against him without going any further, and if suit were brought in the State of his residence upon this judgment, the defendant would be denied the right to make any defense that would defeat the debt, and judgment would inevitably go against him for the amount of it. It would further follow as a result of the recognition of the doctrine asserted by counsel that if a person died intestate in one state owning property in several states, the judgment first rendered in a court of any of these states that determined that he was a resident of that state, with all the parties in interest before the court by constructive service, would affect in a conclusive and unimpeachable way the descent of his property in every state in which it was situated, although, in truth and in fact, the intestate may not have been a resident of the state.

In other words, under this rule, if a man died intestate, leaving estate situated in several states, and a suit setting up his residence therein was brought in each of these states by some of his heirs for the purpose of determining the descent and distribution of his estate, and the heirs residing in each of the other states were brought before the court by constructive service, then the judgment that was first rendered, if it recited that the deceased died a resident of that state, would be conclusive on the rights of all the heirs and settle the title to the estate situated in each of the states. The further effect of this doctrine would be that the rights of heirs in cases like this would be determined not on the justness or merits of their respective claims but on their diligence or ability to obtain the first judgment. It would be a race as to which could obtain the first judicial recognition of his asserted rights, with the prize depending on the speed with which the judicial machinery in each of the several states could be put in motion and adjudicate the question presented.

It appears to us that this method of settling the property rights of conflicting claimants by judicial action ought not for a moment to be entertained. It would give to the swift an advantage they ought not to have and take from the slow rights of which they ought not to be deprived.

How, then, it may be asked, and indeed is, are the rights of heirs to be determined when there is property of the decedent situated in several states? Our answer is, that the courts of each state in which the estate has a situs at the time of the death of the deceased have jurisdiction, in a suit brought for that purpose, and in which all of the interested parties are brought before the court by constructive service of process, to determine between them their respective rights to the property situated within the state. And if one or more valid domestic judgments are thus rendered, the force of these judgments is to be confined within the jurisdiction of the court rendering the judgment, the order in which the judgments were rendered not being controlling, the last

judgment being equally as effective as the first and the first of no more force than the last.

With this status existing between heirs having antagonistic interests, each relying upon the judgment most favorable to him, the question comes, how could the heirs who were not satisfied with the property received under the judgment they had obtained impeach or overthrow the judgment in the other states? Our answer to this is, that the parties to any of these judgments may take the judgment they depend on and go into any of the other states in which judgments were rendered, or in other states in which estate is situated, and bring a suit in a court of competent jurisdiction in that state for the purpose of having the rights of the parties to the property in that State settled, and in that court the rights of all the parties in interest who are brought before the court by actual
272 service of process, or who entered their appearance would be conclusively settled as to the property in that state by the judgment rendered in the suit so brought, subject, of course, to the right to have it modified or reversed according to the practice of the state. This case furnishes a good illustration of our meaning. Mrs. Josie Baker brought in the McCracken Circuit Court a suit on the Tennessee judgment, and Mrs. Augusta Baker entered her appearance to that suit. So that the court had complete jurisdiction of both the persons and subject-matter and the right to render a judgment that would be conclusive as between the parties as to the property situated in this state, leaving the Tennessee judgment in full effect as to the property situated in that state.

The remaining question, and the one that, according to our view of the law, is decisive of the rights of the parties to the property in this state is, was the domicile or legal residence of Charles Baker in Tennessee or Kentucky at the time of his death? This question we are fully authorized to conclusively dispose of, because all the parties are actually before the court and each of them has had opportunity to make defense to the claim asserted by the other. If Charles Baker died a resident of Kentucky, then his personal estate, practically all of which had a situs at the place of his residence, passed under the law of descent and distribution in this state. On the other hand, if he died a resident of the state of Tennessee, then it must pass under the laws of that state. We think he died a resident of this
273 state, and will proceed to state the reasons that have induced us to come to this conclusion.

That he was born in Tennessee and lived there until 1901 when he moved to Paducah, Kentucky, where he lived until he died, is admitted. Tennessee being then his domicile of origin, using the word domicile interchangeably with legal residence, the disputed issue is, did he change his residence and take up a residence of choice in Paducah? If he did the presumption is that his domicile of choice continued until his death.

On the one hand, it is contended that he came to Paducah with the intention of making that his residence and continued a resident of that place until his death, or, that whatever his intention was, his

acts and conduct after he came to Paducah constituted him in law a resident of that place.

On the other hand, it is contended that he came to Paducah merely for the purpose of engaging in business without any intention of making it his home, and never established by his acts or conduct a legal residence in Paducah.

The legal principles determining the place of residence when it is in dispute are fairly well established. The difficulty arises only when it is attempted to apply these principles to the facts of each particular case. Generally speaking, a person cannot have a legal residence in two states or countries, although he may have an actual residence in many places. His actual residence may be in one place and his legal residence may be in another. It does not always follow that the place of actual residence is the place of legal residence, as a person may have an actual residence at a place where he
 274 is only temporarily located and where he has no intention of remaining permanently or indefinitely, while his legal residence will be at that place where he intends to remain permanently or indefinitely. Often, too, the place of legal residence is fixed both by intention and acts, and where both of these conditions concur, there is little trouble in determining the residence; but in other cases it is difficult to reconcile the intention with the acts, and when a condition like this arises, the law will, from facts and circumstances, fix the legal residence of the party.

Out of a great number of cases on this subject we think the following may be selected as stating in a general way the rules of law that control. In *Gilbert v. David*, 235 U. S. 561, 59 L. Ed., —, the Supreme Court, quoting with approved authorities, said: "If a person has actually removed to another place, with an intention of remaining there for an indefinite time, and as a place of fixed domicile, it is to be deemed his place of domicile, notwithstanding he may entertain a floating intention to return at some future period."

In *Ringgold v. Barley*, 5 Md., 186, 59 Am. Dec. 107, the court said: "Whence once removed to his new domicile, however, the party's purpose to remain need not be fixed and unalterable. If it becomes a place of fixed present domicile, it will be sufficient to fix a residence, and although there may be a floating intention to return to his former place of abode at some future period, still these circumstances will not defeat the newly acquired residence or
 275 the rights and obligations which attach to it."

In *Gilman v. Gilman*, 52 Me., 165, 83 Am. Dec. 502, the court said: "But if a citizen of Maine, with his family, or having no family, should go to California to engage in business there, with the intention of returning at some future time, definite or indefinite, and should establish himself there, in trade or agriculture, it is difficult to see upon what principle his domicile could be said still to be here. His residence there, with the intention of remaining there a term of years, might so connect him with all the interests and institutions, social and public, of the community around him, as to render it not only proper but important for him to assume the responsibilities of citizenship, with all its privileges and its burdens. Such residences

are not strictly within the terms of any definition that has been given; and yet it can hardly be doubted that they would be held to establish the domicile."

In *Helm's Trustee v. Com.*, 135 Ky., 392, this court, quoting with approval *Cooley on Taxation*, said: "No exact definition can be given of domicile. It depends upon no one fact or combination of circumstances, but from the whole, taken together, it must be determined in each particular case. * * * From this point of view it is manifest that very slight circumstances must often decide the question. It depends upon the preponderance of evidence in favor of two or more places; and it may often occur that the evidence
276 of fact tending to establish the domicile in one place would be entirely conclusive were it not for the existence of facts and circumstances of still more conclusive and decisive character, which fix it beyond question in another."

In *Boyd's Ex'or v. Com.*, 149 Ky., 764, the court quoted with approval this language: "It is difficult to lay down any rule under which every instance of residence could be brought, which may make a domicile of choice. But there must be to constitute it actual residence in the place, with the intention that it is to be a principal and permanent residence. That intention may be inferred from the circumstances or conditions in which a person may be as to the domicile of his origin, or from the seat of his fortune, his family and pursuits of life. A removal which does not contemplate an absence from the former domicile for an indefinite and uncertain time is not a change of it. But when there is a removal, unless it can be shown or inferred from circumstances that it was for some particular purpose, expected to be only of a temporary nature, or in the exercise of some particular profession, office or calling, it does change the domicile". *City of Lebanon, v. Biggers*, 117 Ky., 430; *Graves v. City of Georgetown*, 154 Ky., 207, and *City of Winchester v. Van Meter*, 158 Ky., 31, are also illustrative cases upon this subject.

277 When we come now to attempt to apply the principle of these cases we are confronted with a mass of evidence on the subject of Baker's intention that is apparently in conflict with his acts and conduct, but out of all of it we think sufficient facts and circumstances can be gleaned to establish with certainty Paducah as the place of his legal residence when he died.

That he was warmly attached to Savannah, Tennessee, the place of his birth, and his home for many years, is shown by many statements made by him to different persons and at different times and places; and there is also much evidence of his expressed intention to return at some time to Savannah and make that place his permanent home. For example, he would often say that his home was at Savannah. That neither he nor his wife would be happy until they got back there. That he was going to build a house at a certain place in Savannah; and that he was in Paducah only for the purpose of making money, and after he had accumulated a sufficiency he was going back to his old home in Tennessee.

When approached by candidates at Paducah and asked to vote for

them, he would often say he could not do it because he voted in Tennessee. He would also say that he never owned a home in Paducah and did not own any real estate there, and did not want to buy any, as when he bought a home he was going back to Tennessee. Other witnesses say that he took an interest in Tennessee politics and

at times observed that he did not want to give up his citizenship in that state. He told others that he had never voted in Paducah; that it was a good place in which to make money but not to live; and on one occasion when speaking to a lawyer about writing his will, he told him that his home was in Tennessee and that he never claimed Paducah as his home. To other persons he said that he never paid any taxes in Kentucky, as he was a citizen of Tennessee and voted there and paid his poll tax there and expected to die there. There is also evidence that at the time of his death he was going to Savannah for the purpose of making some arrangements about building a house there. And it appears that he was assessed and paid a poll or head tax in Hardin County, Tennessee, in 1901 and 1902 and also in 1906.

That he had an affectionate regard for the state of his birth may well be conceded, but many of his expressions of attachment for the state and its people are attributable to the circumstance that the firm of Baker, Eccles & Company drew a large part of its business from the State of Tennessee, and its members were especially anxious to retain the friendship and good will of Tennessee people. With this business object in view it appears that they never neglected an opportunity to indulge in agreeable speeches about that State. As illustrating this, E. W. Baker, a brother, who moved from Savannah to Paducah at the time the firm was organized, said: "As a matter of policy for the benefit of the business we referred continually to Savannah as home and our attachment for the place and done everything of the kind that we could think of that would foster a sentiment on the Tennessee River in favor of our business".

It is also manifest from the evidence that Charles Baker was a very genial man, with a disposition to be on friendly terms with every person with whom he came in contact. He liked to leave everyone in a good humour and made it a point to do and say things that would make a favorable impression on all with whom he had intercourse. As an example of this, it is shown that in telling candidates for office in Paducah that he could not vote for them, he gave as a reason that his home was in Tennessee in order to get rid of their importunities on the easiest terms and in such a way as not to give offense.

It is easily explainable why he paid his poll tax in Tennessee in 1901 and 1902, as it seems he did not leave there until some time in 1901, but why he should have paid a poll tax there in 1906 is not explained by the record. It is certain, however, that he did not pay any poll tax there in 1903 or 1904, or after 1906, and it is also shown in a very satisfactory way that after 1901 he did not cast a vote in the State of Tennessee.

If the place of Baker's residence had to be determined alone by intention manifested in speeches without any reference to the acts

and conduct, that will presently be referred to, we would have little doubt in adjudging that he never lost his legal residence in Tennessee and only had an actual residence in Paducah for the purpose of conducting the business in which he was there engaged, all the while having it in mind to return to Tennessee when the objects of his sojourn in Paducah had been accomplished.

280 But when we turn to the other side of the case we find abundant reason for the opinion that, notwithstanding the "floating intention", as it is expressed in some of the cases, of Baker, he not only had an actual residence in Paducah, but acquired a legal residence there, which he retained until his death. He was not only actively engaged in business in Paducah for about eleven years continuously, but he actually resided there during the whole of this time and took an active part in the politics of the place. Several witnesses testify that he told them when candidates for office that he would vote for them, and after the election told them that he had voted for them. There is also evidence that he registered as a voter and paid a poll tax there. He was thoroughly identified with the social and business life of the place while he lived there, and, in short, so far as his acts and conduct were concerned, he was as much a citizen of Paducah as any other person who lived there; and about an hour before he died told the Captain of the steamboat on which he was being carried on his expected visit to Savannah that "he was going to Savannah and would probably stay there until after the fair and was then coming back to Paducah and would vote for Wilson."

It is true he did not own a home in Paducah, but as he had no family except his wife, he probably thought, as do many other people so situated, that he could board with mere comfort and less expense than he could keep house. He had no business interests in Tennessee except the land that had been given to him, and that was
281 rented out. If, under these facts and circumstances, Baker could not be regarded as a citizen and resident of Paducah, it would be difficult to establish the place of legal residence on conflicting evidence.

For the reasons stated, we think the judgment dismissing the petition of Mrs. Josie Baker should be affirmed, as the effect of the order of dismissal was to adjudge that Charles Baker died a resident of Kentucky, and, therefore, his mother was entitled to one-half of his surplus personal estate in this State and his widow to the other one-half. It is true the judgment appealed from did not so decree, but it is evident that the court merely dismissed the petition instead of entering such a judgment because he was of the opinion that the judgment rendered in the suit of Mrs. Augusta Baker, as administratrix, against Mrs. Josie Baker sufficiently determined the rights of the parties, and it was unnecessary to again adjudge the matter. But, on a return of this case, the lower court will enter a judgment that Charles Baker died a resident of Kentucky, and that his mother, Mrs. Augusta Baker, is entitled to one-half and his widow, Mrs. Josie Baker, to one-half of his personal estate situated in this State at the time of his death, after the payment of his debts. The judgment

should also direct Baker, Eccles & Company to cancel all certificates of stock issued by it to Charles Baker and to re-issue one-half of the shares to Mrs. Josie Baker and one-half to Mrs. Augusta Baker. Such other matters may be embraced in the judgment as will, after the payment of debts, distribute equally between the widow and the mother all other personal estate situated in this State of which Charles Baker died possessed.

Wherefore, the judgment is affirmed.

282 C. C. Grassham, Paducah, Ky.,
Berry & Grassham, "
Pitts & McConnico, Nashville, Tenn.,
E. W. Ross, Savannah, Tenn.,
For Appellant.

Wheeler & Hughes, Paducah, Ky., for Appellees.

283 Afterwards on the 18th day of March the appellant and plaintiff in error filed in the Clerk's office of said Court herein, a Petition for Writ of Error, which is in words and figures following, to-wit:

In the Court of Appeals of the State of Kentucky.

JOSIE C. BAKER, Individually and as Administratrix of Charles Baker, Deceased, Plaintiff in Error,

vs.

BAKER, ECCLES & COMPANY, a Corporation, and AUGUSTA H. BAKER, Individually and as Administratrix of Charles Baker, Deceased, Defendants in Error.

To the Honorable Shackelford Miller, Chief Justice of the Court of Appeals of the State of Kentucky:

The petition of plaintiff in error, Josie C. Baker, individually and as administratrix of her late husband Charles Baker, deceased, as aforesaid, respectfully shows:

1. That the said Charles Baker died intestate in the State of Tennessee in September, 1912;

2. That thereafter, in November, 1912, petitioner was duly and lawfully appointed and qualified as the administratrix of the said Charles Baker, by the County Court of Hardin County, Tennessee;

3. That in December, 1912, the said County Court of Hardin County, Tennessee, ordered and adjudged that the said Charles Baker was, at the date of his death, a domiciled citizen of said State of Tennessee, and that, in accordance with the laws of that State, Petitioner Josie C. Baker was his sole distributee and entitled to all of his personal estate;

4. That thereafter, and in December, 1912, petitioner, individually and as administratrix of her said husband, exhibited and filed her bill in equity in the Chancery Court of Hardin County, Tennessee, against sundry persons, residents of said County, and Augusta H. Baker, mother of said Charles Baker, and

E. W. Baker, brother of said Charles Baker, residents of the State of Kentucky, all of whom were duly and regularly brought before the Court in the manner provided by the laws of said State of Tennessee, seeking (1) to have dower assigned her in her husband's lands, (2) to have adjudicated and settled certain questions as to the title of some of said lands, (3) to have impounded and collected, through proceedings of injunction and receivership, certain debts and rents due her husband's estate, and (4) to have determined and adjudged the place of domicile of her said husband at the date of his death and her rights as his distributee, and especially her rights as to certain corporate stocks of her said husband, theretofore issued by Baker, Eccles & Company, a corporation of the State of Kentucky, the certificates for which were in her possession and exhibited to the Court;

5. That thereafter and in due and regular course, the said Chancery Court of Hardin County, Tennessee, on May 2, 1913, with all interested parties before it and upon full evidence, granted the relief sought and adjudged and decreed that the said intestate, Charles Baker, was domiciled in Hardin County, Tennessee, the place of his birth, and that petitioner, his widow, was his sole distributee and entitled to all of his personal estate, including the aforementioned corporate stocks amounting at face value to \$27,000, which were adjudged to belong to her—all debts of the estate having been paid;

6. That thereafter, in June, 1913, Petitioner Josie C. Baker, individually and as administratrix of the said Charles Baker, presented to the said Baker, Eccles & Company, at its office in Paducah, Kentucky, the said certificates of stock, and requested a transfer thereof into her name, which request was refused;

7. That thereupon, and in the said month of June, 1913,
285 Petitioner having procured the aforementioned proceedings and judgments of the County and Chancery Courts of Hardin County, Tennessee, to be fully transcribed and duly authenticated and certified in the manner prescribed by the Act of Congress of the United States relating to the authentication of the judicial proceedings of any State or Territory, namely, section 905 U. S. Revised Statutes, she, individually and as administratrix of her said husband, exhibited and filed her petition in the McCracken Circuit Court, in the State of Kentucky, against the said Baker, Eccles & Company, together with the duly authenticated copies of the proceedings and judgments of the County and Chancery Courts of Hardin County, Tennessee, aforesaid, and prayed the order and judgment of the said court that the said Baker, Eccles & Company make transfer to her of the said shares of its corporate stock, and that she recover of said Baker, Eccles & Company certain moneys owing by it to the estate of the said Charles Baker, deceased, she having given bond as required by the laws of said State of Kentucky in order to enable her as foreign administratrix to sue in the Courts of that State—basing her said suit upon her claim, secured to her by Section 1 of Article 4 of the Constitution of the United States, and Section 905 U. S. Revised Statutes, passed in pursuance thereof, that the aforesaid proceedings and judgments of the County and Chancery Courts of Hardin County, Tennessee, exhibited with and forming the basis of her petition, were entitled to and should receive the same faith and

credit in the State of Kentucky that they were entitled to in the State of Tennessee;

8. That thereafter, Augusta H. Baker, mother of the said Charles Baker, was permitted to intervene as a defendant in said last mentioned suit; and she and the said Baker, Eccles & Company answered and made defense thereto;

9. That upon the hearing of said cause, in 1914, the said McCracken Circuit Court, in the State of Kentucky, denied petitioner's said claim of equal faith and credit for her said judgments of the County and Chancery Courts of Hardin County, Tennessee,—denied to them any force or effect in the State of Kentucky, and dismissed her said petition outright;

10. That Petitioner prayed and obtained an appeal from said judgment of dismissal, to the Court of Appeals of the State of Kentucky, the highest Court of said State to which the case can be carried or in which it can be decided, where, on the 11th day of February, 1915, the said Court of Appeals affirmed the said judgment, and again denied Petitioner's right, secured to her by section 1 of Article 4 of the Constitution and section 905 U. S. Revised Statutes, aforesaid, to have her said judgments in Tennessee given full faith and credit in the State of Kentucky;

11. That the said judgment of the Court of Appeals of the State of Kentucky denying Petitioner's aforesaid right under the Constitution and laws of the United States, is final and she can obtain no further relief in the Courts of said State; that said Court of Appeals is the highest court of said State of Kentucky in which a decision in this suit and this matter can be had.

Wherefore Petitioner prays for the allowance of a writ of error from the Supreme Court of the United States to the Court of Appeals of the State of Kentucky and the Judges thereof, to the end that the record in said matter may be removed into the Supreme Court of the United States, and the error complained of by Petitioner may be examined and corrected and the said judgment reversed.

JOSIE C. BAKER,

Individually and as Admx. of Charles Baker, Petitioner,

By C. C. GRASSHAM AND
BERRY & GRASSHAM,

E. W. ROSS,

JNO. A. PITTS,

Her Attorneys.

Filed March 18, 1915. Rob't L. Greene, C. C. A.

287 The writ of error as prayed for in the foregoing petition is hereby allowed, this the 18th day of March, A. D., 1915, the writ to operate as a supersedeas, and the bond for that purpose is fixed at the sum of \$1,000.

Dated at Frankfort, Kentucky, this 18th day of March, A. D., 1915.

SHACKELFORD MILLER,
*Chief Justice Court of Appeals of the
State of Kentucky.*

Filed in my office this 18th day of March, A. D. 1915.

ROBT L. GREENE,
Clerk Court of Appeals of the State of Kentucky.

Filed March 18, 1915. Rob't L. Greene, C. C. A.

288 Also filed the order of the Chief Justice of the Court of Appeals of Kentucky allowing the Writ of Error, which is in words and figures following, to-wit:

289 The Court of Appeals of the State of Kentucky.

JOSIE C. BAKER, Individually and as Administratrix of Charles Baker, Deceased, Appellant,

vs.

BAKER, ECCLES & COMPANY and AUGUSTA H. BAKER, Individually and as Administratrix of Charles Baker, Deceased, Appellees.

The above entitled matter coming on to be heard upon the petition of the appellant therein for a writ of error from the Supreme Court of the United States to the Court of Appeals of the State of Kentucky, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the *Supreme Court of the United States* the questions presented by the record in said matter—

It is ordered that a writ of error be, and is hereby, allowed to this Court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby, approved.

SHACKELFORD MILLER,
Chief Justice of the Court of Appeals of the State of Kentucky.

Filed March 18, 1915. Rob't L. Greene, C. C. A.

290 Also filed her Writ of Error, which is as follows, to-wit:

291 *Writ of Error.*

UNITED STATES OF AMERICA:

The President of the United States to the Chief Justice and Honorable Judges of the Court of Appeals of Kentucky, Greetings:

Because in the record and proceedings, as also in the rendition of a judgment on a plea which is in the said Court of Appeals before you or some of you, being the highest Court of Law and Equity of the said State in which a decision could be had in the said suit between Josie C. Baker, individually and as Administratrix of Charles Baker, deceased, Appellants, and Baker, Eccles & Company and Augusta H. Baker, individually and as Administratrix of Charles H. Baker, deceased, Appellees, wherein was drawn in ques-

tion a right and authority existing under the Constitution and Laws of the United States and the decision was against the exercise of such right and authority, and wherein was drawn in question the construction of the Constitution and statutes of the United States and the decision was against the right, title or immunities specifically set up and claimed under the United States Constitution and said Statutes of the United States, a manifest error hath happened to the great damage of the said Josie C. Baker, individually and as Administratrix of Charles Baker, deceased, as by her complaint appears, and whereas we being willing that error, if any hath been done, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, we do now command you if judgment be therein given that then, under your seal, distinctly and openly to send the record and proceedings aforesaid to the Supreme Court of the United States together with this Writ so that you have the same at Washington within 30 days from the date hereof in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the error, that of right and according to the Laws and the Constitution of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this the 18th day of March, A. D., 1915, and of the Independence of the United States of America the 139th year.

[Seal United States of America, Eastern K'ty Dist. Court.]

JNO. W. MENZIES,
Clerk United States District Court,
Eastern District of Kentucky,
By CHAS. N. WIARD, D. C.

Allowed this 18th day of March, 1915.

SHACKELFORD MILLER,
Chief Justice Court of Appeals of Kentucky.

Filed Mar. 18, 1915. Robt. L. Greene, C. C. A.

292 Also at the same time filed Writ of Error Bond and Assignment of Errors, which are as follows, to-wit:

293 The Court of Appeals of Kentucky.

JOSIE C. BAKER, Individually and as Administratrix of Charles Baker, Deceased, Plaintiff in Error,

vs.

BAKER, ECCLES & COMPANY and AUGUSTA H. BAKER, Individually and as Administratrix of Charles Baker, Deceased, Defendant in Error.

Assignment of Errors.

And now comes the said plaintiff in error and in connection with her petition for a writ of error herein, respectfully submits that in

the record, proceedings, decision, and final judgment of the Court of Appeals of the State of Kentucky, in the above-entitled matter, there is manifest error in this, to-wit:

First. The said judgment of the Court of Appeals of the State of Kentucky is repugnant to and in conflict with Article IV, section 1, of the Constitution of the United States, which declares that "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

294 Second. That said judgment of the Court of Appeals of the State of Kentucky is repugnant to and in conflict with the Act of Congress, Section 905 U. S. Revised Statutes, which prescribes the manner in which the public Acts, records, and judicial proceedings of any State or Territory of the United States shall be authenticated, and declares that "the said records and judicial proceedings, so authenticated, shall have such faith and credit given them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

Third. The record of the judicial proceedings by plaintiff in error in the administration and distribution of the estate of Charles Baker, deceased, in the County Court of Hardin County, in the State of Tennessee, having been authenticated in accordance with the laws of the United States and produced and suit based thereon in the State of Kentucky, the said judgment of the Court of Appeals of the said State of Kentucky failed and refused to give to said judicial proceedings such faith and credit as they have by law and usage in the courts of the said State of Tennessee.

Fourth. The record of the judicial proceedings by plaintiff in error against defendant in error Augusta H. Baker in the Chancery Court of Hardin County, Tennessee, wherein the domicile of Charles Baker, deceased, at the date of his death, was regularly and validly adjudged to have been in the State of Tennessee and the plaintiff in error to be his sole distributee, having been duly authenticated in accordance with the laws of the United States and produced and suit based thereon in the State of Kentucky, the said judgment of the Court of Appeals of said State of Kentucky failed and refused to give to said judicial proceedings and judgment of the Chancery

295 Court of Hardin County, Tennessee, such faith and credit as they have by the law and usage in the courts of said State of Tennessee.

Fifth. The said judgment of the Court of Appeals of the State of Kentucky erroneously failed and refused to give to said judgments of the County Court, and of the Chancery Court, of Hardin County, in the State of Tennessee, determining the place of domicile of Charles Baker, deceased, any faith and credit or any force and effect whatsoever, in the State of Kentucky; and erroneously heard and considered evidence on the question of such place of domicile, and on such evidence erroneously overturned and nullified

the findings and judgments of said county and Chancery Courts of Tennessee on that issue of fact.

Sixth. The said judgment of the Court of Appeals of the State of Kentucky erroneously held and adjudged that the Chancery Court of Hardin County, Tennessee, conceded to be a Court of superior and general jurisdiction, in a confessedly regular and valid proceeding brought in accordance with the laws of that State by the lawful personal representative of the intestate decedent, Charles Baker, appointed there and charged with the duty of distribution of his personal estate a substantial part of which was located there, and against all persons interested and who were brought before such court either by personal or by constructive service as required by the laws of that state in such cases, could not decide and finally determine the issue of fact as to the place of the domicile of the intestate so as to bind and conclude a non-resident defendant brought before such court by constructive service and who did not personally appear and defend; and erroneously held and adjudged that such finding and judgment of the Chancery Court of the State of Tennessee might be collaterally attacked and disregarded by such non-resident defendant, in the State of Kentucky.

296 Seventh. The said Court of Appeals of the State of Kentucky, having erred in the respects above indicated, erroneously affirmed the judgment of the McCracken Circuit Court in the State of Kentucky dismissing the suit of petitioner therein, because there are no other matters or grounds contained in the record which can warrant or sustain such dismissal and affirmance.

Eighth. The said Court of Appeals of the State of Kentucky, having held and treated the proceeding and judgment of the said Chancery Court of Hardin County, Tennessee, as regular and valid within the State of Tennessee, and as having conclusively established in that State that the domicile of Charles Baker was in the State of Tennessee so as to entitle plaintiff in error to all his personal estate within the State of Tennessee, the said Court of Appeals of the State of Kentucky erred in failing and refusing to hold and adjudge that said judgment was effective to entitle plaintiff in error to the certificates for \$27,000 of stock in the corporation of Baker, Eccles & Company, which certificates were then and there present and in the custody and jurisdiction of said Tennessee Chancery Court.

C. C. GRASSHAM AND
BERRY & GRASSHAM,
E. W. ROSS,
JNO. A. PITTS,
Attorneys for Plaintiff in Error.

Filed Mar. 18, 1915. Robt. L. Greene, C. C. A.

297 Know all men by these presents, that we, Josie C. Baker, individually and as administratrix of Charles Baker, deceased as principal, and E. W. Ross, Jno. A. Pitts and C. C. Grassham, as sureties, are held and firmly bound unto Baker, Eccles &

Company and Augusta H. Baker, individually and as administratrix of Charles Baker, deceased, in the sum of One Thousand Dollars (\$1,000), to be paid to said obligees, their successors, representatives and assigns; to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of March, A. D. 1915.

Whereas, the above named plaintiff in error and principal obligor hath procured a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Court of Appeals of the State of Kentucky;

Now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute her said writ of error to effect and answer all costs and damages if she shall fail to make good her plea, then this obligation shall be void; otherwise to remain in full force and effect.

JOSIE C. BAKER,
Individually and as Administratrix of
Charles Baker, Deceased,
 By E. W. ROSS, *Attorney.*
 C. C. GRASSHAM, [SEAL.]
Surety.
 E. W. ROSS, [SEAL.]
Surety.
 JNO. A. PITTS, [SEAL.]
Surety.

298 Signed and sealed by E. W. Ross and Jno. A. Pitts in my presence, in witness whereof I attach my official signature and seal.
 [SEAL.] C. R. COCKLE,
Notary Public for Davidson County, Tennessee.

Signed and sealed by C. C. Grassham in my presence, in witness whereof I attach my official signature and seal.
 [SEAL.] FRANCES JOHNSON,
Notary Public for McCracken County, Kentucky.

I hereby approve the foregoing bond and sureties this 18th day of March, A. D. 1915.

SHACKELFORD MILLER,
Chief Justice of Court of Appeals
of the State of Kentucky.

Filed in my office this 18th day of March, A. D. 1915.
 ROBT. L. GREENE,
Clerk Court of Appeals of the
State of Kentucky.

Filed Mar. 18, 1915. Robt. L. Greene, C. C. A.

298½ The Court of Appeals of the State of Kentucky.

JOSIE C. BAKER, &C.,

vs.

BAKER, ECCLES & COMPANY, &C.

Affidavit.

The affiant C. C. Grassham states that he is a resident of Paducah, McCracken County, Ky., and that he is well and personally acquainted with Jno. A. Pitts and E. W. Ross, co-sureties offered on the Bond of Appellant in Error and that he and his co-sureties are jointly worth, in real estate and personal property subject to Execution and free and unencumbered, over and above all liabilities the sum of \$10,000; and that this affiant is worth subject to execution and free and unencumbered over and above all debts and liabilities the sum of \$10,000, and that from his knowledge of the affairs of said Pitts and Ross they are each, worth subject to execution and as otherwise set forth \$10,000.

C. C. GRASSHAM.

Subscribed and sworn to before me by C. C. Grassham this 18th day of March, 1915.

ROBT. L. GREENE,

Clerk Kentucky Court of Appeals.

299 At the same time filed in the Clerk's office a Citation with service accepted, which citation is as follows, to-wit:

300 UNITED STATES OF AMERICA, ss:

To Baker, Eccles & Company and Augusta H. Baker, individually and as administratrix of Charles Baker, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Court of Appeals of the State of Kentucky, wherein Josie C. Baker, individually and as administratrix of Charles Baker, deceased, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Shackelford Miller, Chief Justice of Court of Appeals of the State of Kentucky, this the 18th day of March A. D., 1915.

SHACKELFORD MILLER,

Chief Justice Court of Appeals of the State of Kentucky.

Service of copy of above citation acknowledged, this the 18th day of March, 1915.

WHEELER & HUGHES,
Attorneys for Defendants in Error.

Filed Mar. 18, 1915. Robt. L. Greene, C. C. A.

301 And at the same time filed her *Præcipe* for the parts of the record desired to be copied, which *Præcipe* is in words and figures following, to-wit:

302 In the Court of Appeals of the State of Kentucky.

JOSIE C. BAKER, Individually and as Administratrix of Charles Baker, Deceased, Plaintiff in Error,

vs.

BAKER, ECCLES & COMPANY and AUGUSTA H. BAKER, Individually and as Administratrix of Charles Baker, Deceased, Defendants in Error.

Præcipe.

To the Clerk:

You are requested to *take* a transcript of record to be filed in the Supreme Court of the United States pursuant to a writ of error allowed in the above entitled cause and to include in such transcript of record the following and no other papers or exhibits, to-wit:

1. Original and amended petitions of plaintiff in error Josie C. Baker, and all exhibits thereto except transcript of judgment of Augusta H. Baker, administratrix, vs. Josie C. Baker in McCracken Circuit Court of the State of Kentucky.

2. Intervening petition and amendments of defendant in error, Augusta H. Baker, administratrix and individually, and answers and amended answers of said Augusta H. Baker, administratrix and individually, and of Baker, Eccles & Company, omitting transcript of judgment of Augusta H. Baker, administratrix vs. Josie C. Baker.

303 3. Original and amended answers of plaintiff in error to the intervening petitions of defendant in error, Augusta H. Baker, administratrix and individually.

4. All replies and amended replies and rejoinders and amended rejoinders of plaintiff and defendants to opposing pleadings, and all orders and agreements controverting of record any affirmative matter in any pleadings of either plaintiff or defendants in error.

5. All demurrers and motions in the McCracken circuit court and all orders and rulings of said court thereon and all minute entries of said McCracken Circuit Court in said cause including the final judgment and appeal.

6. All minute entries of the Court of Appeals in said cause, including its final judgment and the opinion of said Court of Appeals.

7. The petition for writ of error in said Court of Appeals, allow-

ance of same, bond and approval thereof, assignment of errors, citation and service of same, this pra-cipe for transcript and service of same and your certificate.

8. The transcript of the record in the case of Augusta H. Baker, administratrix, and individually vs. Josie C. Baker, in the McCracken Circuit Court, and the depositions taken in this case of Josie C. Baker, individually and as administratrix of Charles Baker vs. Baker, Eccles & Company and Augusta H. Baker, administratrix and individually, in said McCracken Circuit Court, not being material to any question of which, the Supreme Court of the United States has cognizance upon said writ of error, you will omit same from the transcript of record.

304 And you will please file said transcript with the Clerk of the Supreme Court of the United States.

Dated 18th day of March, 1915.

C. C. GRASSHAM,
BERRY & GRASSHAM,
E. W. ROSS AND
JNO. A. PITTS,
Attorneys for Plaintiff in Error.

Filed Mar. 18, 1915. Robt. L. Green, C. C. A.

Service of above praecipe acknowledged this 18th day of March, 1915.

WHEELER & HUGHES,
Att'ys for Def'ts in Error.

305 COMMONWEALTH OF KENTUCKY,
Court of Appeals, set:

I, Robt. L. Greene, Clerk of the Court of Appeals of Kentucky, in obedience to the Writ of Error herein herewith transmit to the Supreme Court of the United States a transcript of the record ordered to be copied by the Praecipe filed herein in the case of Mrs. Josie Baker, &c., Appellants and Plaintiffs in Error, vs. Baker, Eccles & Company, &c., Appellees and Defendants in Error, and as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of my office. Done at Frankfort, Kentucky, on this the 10th day of April, A. D., 1915.

[Seal Kentucky Court of Appeals.]

ROBERT L. GREENE,
Clerk of the Court of Appeals of Kentucky.

Fee for this transcript \$91.00.

306 In the Supreme Court of the United States.

Mrs. JOSIE C. BAKER, Individually and as Adm'x of Charles Baker,
Deceased, Plaintiff in Error,

vs.

BAKER, ECCLES & COMPANY and AUGUSTA H. BAKER, Adm'x of
Chas. Baker, Deceased, in Kentucky, Defendants in Error.

On Writ of Error to the Court of Appeals of Kentucky.

To the Clerk of the Supreme Court of the United States, Washington,
D. C.:

Under section 9 of Rule 10 of the Supreme Court of the United States, the plaintiff in error in above entitled cause, hereby states that the only errors relied on by the plaintiff in error are those set forth in the assignment of errors at pages 293 to 297 of the transcript, all of which relate to the failure and refusal of the Kentucky Court of Appeals to give full faith and credit to the judgments of the County and Chancery Courts of Hardin County, Tennessee, in the matter of the estate of Charles Baker, deceased, as fully set forth in the transcript of the record and the said assignment of errors; and

That the only parts of the record which plaintiff in error thinks necessary for the consideration thereof, and consequently which need be printed, are those designated herein to be printed, by reference to the said parts and the pages of the transcript of the record where they are contained, that is to say:

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45. This statement or præcipe to you, with any further statement or præcipe for printing which may be filed by defendants in error.	

The foregoing parts of the record, only, are pertinent or material on the questions to be considered by the Supreme Court, and they only need or should be printed.

JOSIE C. BAKER,
Adm'x as Aforesaid and Individually, Plaintiff in Error,
 By JNO. A. PITTS,
 E. W. ROSS,
 C. C. GRASSHAM,
Attorneys.

Service of foregoing statement of praecipe acknowledged. This 17 day of April, 1915. Defendants will not specify additional parts of the record to be printed.

BAKER, ECCLES & CO.,
Mrs. AUGUSTA H. BAKER,
Adm'x of Chas. Baker, Dec'd., &
Mrs. AUGUSTA H. BAKER,

By WHEELER & HUGHES,
Attorneys for Defendants in Error.

311 [Endorsed:] File No. 24,680. Supreme Court U. S., October term, 1914. Term No. 936. Mrs. Josie C. Baker, individually, etc., Pl'ff in Error, vs. Baker, Eccles & Co. et al. Statement of errors relied upon and designation by plaintiff in error of parts of record to be printed, and proof of service of same. Filed April 26th, 1915.

Endorsed on cover: File No. 24,680. Kentucky Court of Appeals. Term No. 936. Josie C. Baker, individually and as administratrix of Charles Baker, deceased, plaintiff in error, vs. Baker, Eccles & Company, and Augusta H. Baker, individually and as administratrix of Charles Baker, deceased. Filed April 26th, 1915. File No. 24,680.

No. 115

FILED
DEC 11 1916
JAMES D. MARSH

Supreme Court of the United States

OCTOBER TERM, 1916

JOSIE C. BAKER,

Individually, and as Administratrix of Charles Baker,
Deceased,
Plaintiff in Error.

vs.

BAKER, ECCLES & COMPANY

and

AUGUSTA H. BAKER,

Individually, and as Administratrix of Charles Baker,
Deceased,
Defendants in Error.

In Error in the Court of Appeals of the
State of Kentucky.

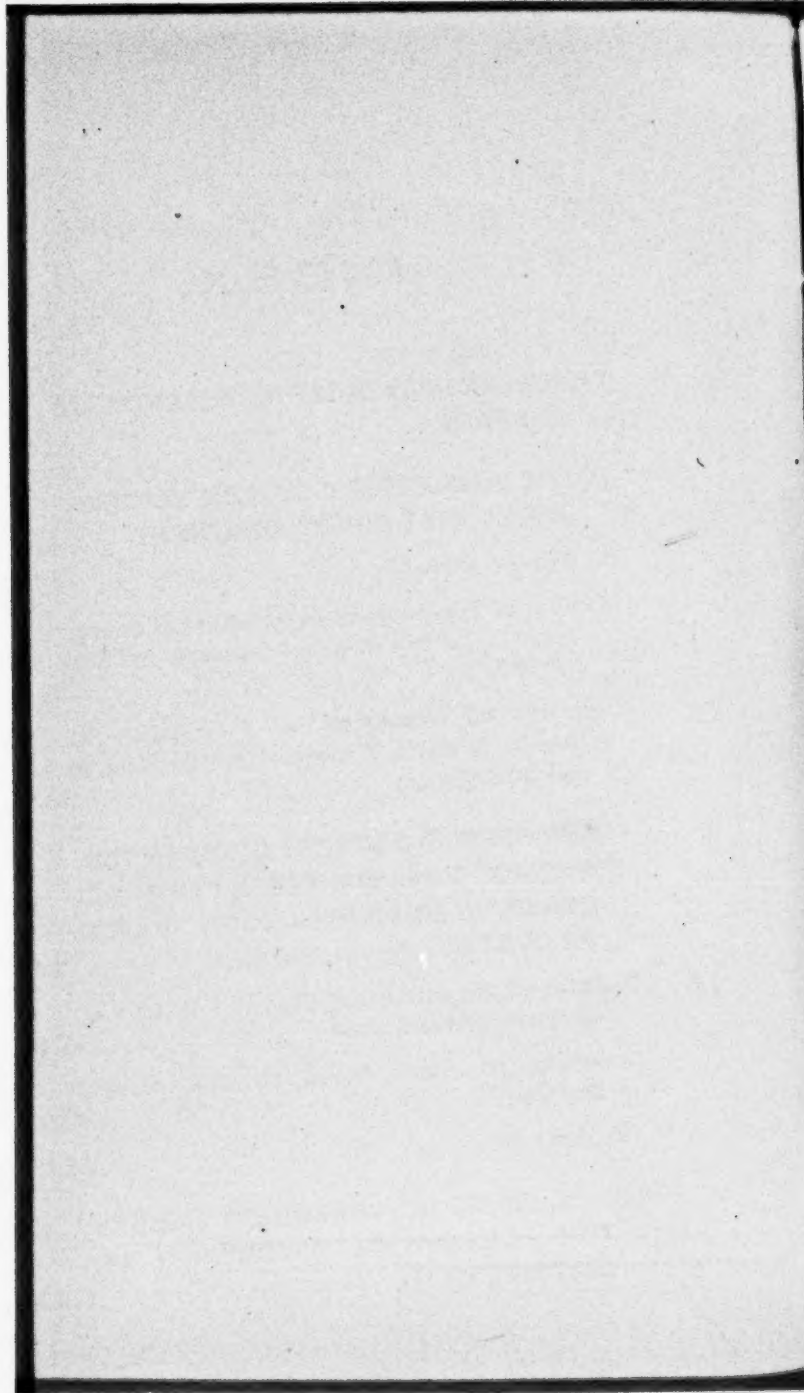
Supplemental Brief of Plaintiff in Error.

JNO. A. FITZ,
E. W. ROSS,

Attorneys.

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Supreme Court of the United States

OCTOBER TERM, 1916.

JOSIE C. BAKER,

Individually, and as Administratrix of Charles Baker,
Deceased,

Plaintiff in Error,

VS.

BAKER, ECCLES & COMPANY

AND

AUGUSTA H. BAKER,

Individually, and as Administratrix of Charles Baker,
Deceased,

Defendants in Error.

In Error to the Court of Appeals of
the State of Kentucky.

SUPPLEMENTAL BRIEF OF PLAINTIFF IN ERROR.

May It Please the Honorable Court:

This case was before the Court at the last term on motions of defendants in error to dismiss, or to affirm, which motions were denied.

In opposition to these motions, plaintiff in error filed a brief stating the facts and discussing pretty fully the principal question in the case.

This is the gray-backed brief, is still relied on, and it is only intended now to supplement it—not to repeat it in any part.

Defendants in error have recently filed a short brief (the yellow-backed one), and it is our purpose, first, to correct some errors in that brief.

**ERRORS IN LAST BRIEF OF DEFENDANTS
IN ERROR.**

Counsel for defendants in error appear not to be always mindful of either the exact facts of the case or the real and only question presented for decision here.

In the two pages of the brief devoted to “the facts”, emphasis is placed on alleged facts which it is said appear in part from the opinion of the Kentucky Court of Appeals and in part from the Kentucky record (though the record is not cited), concerning the *place of domicile* of Charles Baker.

It is quite apparent that these facts are not at all pertinent here. The only question involved here is whether the Kentucky Court of Appeals gave proper force and effect to the *judgments of the Tennessee Chancery and County Courts, adjudging that the domicile was in Tennessee*. It

matters not at all what appears either in the Kentucky record or in the opinion of the Kentucky Court of Appeals *on that question of fact*. That question of fact was decided and concluded by the Tennessee judgments, and the only question here is whether those judgments were entitled to full force and effect in Kentucky. Adversaries seem occasionally to overlook this distinction, which, of course, should be kept constantly in mind.

Counsel for defendants in error also erroneously state, on page 4 of their last brief, that plaintiff in error's position in the Courts below on the effect of the judgment of the *Tennessee County Court* as to domicile *has been abandoned*. Really, the quotation made on page 4 from our brief on this point shows counsel's mistake. It there appears that we stated that we did not "emphasize *on this motion* that aspect of the case", and for the reasons stated; that is, on the motion to dismiss or affirm. That was not, we respectfully submit, an *abandonment* of that aspect of the case; and although it is of subordinate importance, in view of the more formal and elaborate consideration and decision of the same question by the Tennessee *Chancery Court*, we shall nevertheless, in the course of this brief, take occasion to develop and emphasize it.

It must be obvious that the elaborate and somewhat involved argument, on pages 6 to 10 of the brief, based on Story's Conflict of Laws and the case of *Harvey v. Richards*, 1 Mason, as to *where* the personal property of a decedent *is to be administered*, can have no force here; for no such question is presented here. The question, even in the Courts below, in this case, was never as to *where* the personalty of a decedent *is to be administered*, but was as to whom it *is to be distributed*—in other words, the question was one of *distribution* rather than of *administration*. That administration was proper in both States—the decedent having personalty in both States—was conceded on both sides from the beginning.

The third division of the argument of defendants in error, beginning on page 10 of the last brief, forcibly illustrates the lapse of counsel's attention from the only question here involved. The point there made is, that *the Kentucky Court* decided the domicile to be in Kentucky, and the whole argument is built up on this point, which is sought to be buttressed by the authorities cited on the *place of administration or distribution*. Counsel seem altogether to overlook the fact that if the decision of the question of domicile *by the Tennessee Courts* was of force in Kentucky (which is the question and the sole question

here), then the Kentucky Court *was thereby precluded from any re-examination of it*. The argument is a mere begging of the question.

As to the point that a *domiciliary* personal representative takes *title* to all the intestate's personality, wherever situated, and that *corporate stocks*, for the purpose of administration and distribution, are to be regarded legally as located at the owner's domicile at the date of his death—these will be treated later in this brief.

The last point made in this last brief of defendants in error is, that the “decision of the Kentucky Court was right”. No authority whatever is cited, and the only answer we wish to make here to these three pages of argument is to correct some mistakes of fact contained in them, and to note the fact that the *judgment* of the McCracken County Circuit Court, in Kentucky, to the effect that Charles Baker was domiciled in Kentucky, and on which much of this argument is based, was held by the Kentucky Court of Appeals to be *absolutely void*—and that decision is not reviewable here.

The brief says, on page 14:

“At the instance of the plaintiff in error the Kentucky Court reopened its former judgment and again examined the question

of domicile, and in doing so sought and obtained exhaustive proof upon the controverted fact."

All we can say of this, with due courtesy, is that it is a mistake, and that the record contains no warrant for such a statement. On the contrary, the whole record shows that throughout the case the plaintiff in error relied upon her Tennessee judgments as concluding the question of domicile. This contention of plaintiff in error was thus stated in the opinion of the Court of Appeals. (Pr. Rec., p. 88):

"In behalf of Mrs. Josephine Baker the argument is made that the Tennessee judgments finding that Charles Baker died a resident of Tennessee are conclusive on this question, and this being so, his widow, under the law of Tennessee, about which there is no dispute, was and is entitled to the whole of his surplus personal estate."

And again, on page 94, with reference to the Chancery judgment:

"On this issue counsel for the widow urgently insist that this Tennessee Chancery judgment, standing as it does unmodified and unreversed, conclusively settled not only in Tennessee, but everywhere every question determined by it affecting parties

who were before the Court by actual or constructive service, and therefore its operation and effect could not be called in question when suit was brought on it in this State."

It is thus seen that there is no basis for the statement quoted from the brief of adversaries on this point.

On the same page (14) of the brief, it is also said:

"The Kentucky Court *had custody of the property*, and it appears of record all interested distributees were before the Court. Having custody of the property of the persons interested, why should it forego the right to determine, at the instance of its own citizens, the disputed fact?"

This is also a mistake. The Kentucky Court *had not the custody of the property*. No property was impounded in the suit in any way. The "property" involved consisted of certain shares of stock in the corporation of Baker, Eccles & Co., and certain indebtedness of that corporation to the deceased, Charles Baker. The plaintiff in error had possession of the certificates of stock, duly transferred to her by orders of both the County and Chancery Courts of Hardin County, Tennessee, and she brought her suit in Kentucky against that corporation alone to compel it to

transfer the stock to her on its books, and to recover the debt owing to her husband's estate by the corporation. This was the character of the suit at its inception. The intervention in the case by the mother, Augusta H. Baker, on her own petition, brought into the litigation the question of the effect of the Kentucky judgment in her favor (subsequently held void), but it brought no *property into the custody of the Court*. As to the *legal situs*, for the purpose of distribution, of this corporate stock and this indebtedness—that is another question, to be considered in its proper place. Certainly, as we have said, the property of Charles Baker's estate was not *in the custody of the Court*—even if that were material, and it is not, as we think.

Again, on the same page (14) of the brief, counsel for defendants in error very complacently state that they "conceded" that plaintiff in error was not before the Court by constructive service in Mrs. Augusta H. Baker's suit in Kentucky. This is also a mistake. They made no such concession, but strenuously urged the contrary. This question is fully discussed and decided in the opinion of the Court of Appeals, pages 88 to 91, of the printed record, where the contentions of counsel for defendants in error in support of the Kentucky judgment are fully stated by the Court.

Only one other extract from the brief of defendants in error will be made, and this only because it illustrates the strange mental confusion into which learned counsel have fallen with respect to the question to be decided here.

On page 15 they say:

“The Kentucky Court, having custody of the property of the decedent in an action commenced before any foreign judgment was obtained, is asked to surrender its jurisdiction and to forego a determination of the litigated matter because a foreign Court had *first* determined the question, determined it in an action where the Kentucky distributees were not served with process and did not appear.”

It is difficult to catalogue or schedule the numerous errors and misconceptions involved in this brief extract. The mistaken assumption that the Court *had custody* of the property we have already noticed. The “action” referred to is the Kentucky suit of Augusta H. Baker, the judgment in which the Court of Appeals held was *absolutely void*.

It was, presumably, the Court having cognizance of this action of Augusta H. Baker that it is here said had custody of the property “before any foreign judgment was obtained”, and which

it is said was “asked to surrender its jurisdiction and forego a determination of the litigated matter”, etc.

Now, that suit of Augusta H. Baker was finally ended by *final* judgment (void though it was) on the 13th day of February, 1913 (Printed record, pp. 33-4, petition of Augusta H. Baker), while the present suit was not commenced until June 21, 1913 (Pr. Rec., p. 1), and the judgment of the Tennessee Chancery Court was not pronounced until May 2, 1913 (Pr. Rec., p. 24).

So that the “action” referred to by counsel, in which the Court, it is said, was “asked to surrender its jurisdiction and to forego a determination of the litigated matter”, had been finally determined and the Court’s jurisdiction of it exhausted more than four months before the present suit was commenced, and nearly three months before the Tennessee judgment was pronounced.

But even this is not the most remarkable feature of the extract. It assigns the reason why the Court in the action referred to was asked to surrender its jurisdiction and forego a determination of the litigated fact to be, “because a foreign Court had *first* determined the question”—the italics are by the authors of the brief. It starts out with a “Court having custody of the

property of the decedent in an action commenced *before* any foreign judgment was obtained", and marvels why such a Court having such custody should be asked to *surrender its jurisdiction* and *forego a decision of the question involved*, and yet, before it gets to the end of the sentence, it crosses itself and discloses the assumption that the "foreign Court had *first* determined the question".

We refrain from further comment. It is only by such confused reasoning as this that this judgment of the Court of Appeals is sought to be sustained.

FORCE AND EFFECT OF THE TENNESSEE COUNTY COURT JUDGMENT.

We pass next to the force and effect which should be given in Kentucky to the Tennessee County Court judgment, which we did not emphasize in our principal and former brief.

The facts on this point are sufficiently stated in the opinion of the Court of Appeals, at pages 84-5, and there is no dispute of the fact that the County Court of Hardin County, Tennessee, *actually adjudged* that the domicile of Charles Baker at his death was in that county and State; nor is it disputed that that Court was a Court

of *distribution*, as well as of probate and administration, and that it was *necessary* for it to determine such domicile before it could exercise its jurisdiction to order *distribution*. The full proceedings of that Court appear at pages 50-58 of the printed record, showing appointment, bond, letters, inventory and final settlement of the administratrix.

Now, we respectfully submit that the fundamental error of the Court of Appeals of Kentucky on this point lies in its assumption that the County Court in Tennessee is a *Court of probate* merely, and that it is an *inferior* and *special* tribunal, without *general jurisdiction* in matters of *distribution* of the estates of deceased persons.

We concede that where, by statute, a County Court has jurisdiction to grant letters of administration on various grounds, *other than local domicile*,—as for example, where property is located, real or personal, where debtors reside, where the deceased died, and the like—the mere *grant of letters* will not operate as an *adjudication of domicile*; and we may also concede, without at all impairing the force of our contention, that the adjudication of domicile in a *grant of administration*, when *not necessary to the validity of the grant*, will not be conclusive of domicile in another State. This is the extent of the deci-

sions of this Court in *Thorman v. Frame*, 176 U. S., 350, and *Overby v. Gordon*, 177 U. S., 214.

But most obviously the question is a different one where there is an *actual adjudication of domicile* which is *necessary* to the exercise of *expressly granted jurisdiction to make distribution* of an estate. The distinction here adverted to is well drawn by Lord Blackburn and Lord Chancellor Herschell, in their opinions in *De Mora v. Concha*, 29 Chan. Div., 268, 11 App. Cas., 541-72, a case cited by Chief Justice Fuller in *Thorman v. Frame*, *supra*, and we may as well digress now to develop this point.

De Mora v. Concha.

This case, in the House of Lords, is fully reported under the style of *Concha v. Concha*, in Vol. 11 of English Ruling Cases, by Campbell—American notes by Irving Browne—pages 22, *et seq.*, from which we take the facts and extracts quoted.

In view of the fact that Juan Jose Concha, a wealthy *native of Chili*, died in *France*, after having made a will and codicil in *London*, naming Jose Maria De Mora and Theodore Manniquin, executors, and Trinidad Concha residuary legatee, and a live, fighting daughter, Adelinda

Concha, it is not surprising to find that there was much litigation, in many forms, and in many different actions over the estate, covering a period of more than twenty-five years. This particular case of *Concha v. Concha*, in the House of Lords, was an appeal in two such cases, *De Mora v. Concha* and *Concha v. Manniquin*, and hence the change in the style of the case on appeal.

The case was very thoroughly considered, opinions being delivered by the Lord Chancellor Herschell, and Lords Blackburn, Bramwell, Fitzgerald, and Ashbourne.

We shall not attempt any lengthy statement of the facts, but only such of them as are necessary to demonstrate the point that the decision strongly supports and fortifies our contention. We take them from the report of the case (11 Eng. Rul. Cas., pp. 23, *et seq.*), but for brevity state them in substance rather than quote long extracts.

Juan Jose Concha, a native of Chili, died in France in 1860, having made his will and codicil in London, by which he appointed De Mora and Manniquin executors, and made Trinidad Concha residuary legatee. A caveat having been issued by the testator's daughter, Adelinda Concha, the executors

propounded the will for probate, in the Probate Court, alleging that the testator, though a native of Chili, was domiciled in England at the time of his death. The daughter, Adelinda, pleaded that her father was a domiciled subject of Chili at the date of his will and of his death; that the will and codicil *were not executed with the forms and requisites of the law of Chili*; that he had not complied with the rules and restrictions imposed upon testamentary disposition by the law of Chili; and that, therefore, the will and codicil had not been *duly executed*, but if executed they were *inoperative*. The executors denied these insistences of the daughter.

Sir Creswell Creswell, as *Probate Judge*, heard the application, and on July 28, 1860, decided for the executors and the will was probated and the executors qualified—the Probate Judge deciding, among other things, that the testator's *domicile was in England*. This was the original case of *De Mora v. Concha*.

Later, the daughter, Adelinda Concha, filed her bill in equity, against the executors, in which she re-asserted that her father was a domiciled Chilian, and that his will and codicil undertaking to dispose of his estate contrary to the laws of Chili were void; and the executors contended that she was bound by the decision of the Probate

Judge, and could not relitigate that question. This was the original case of *Concha v. Manniquin*.

This brief statement of the facts, with one other which should be borne in mind, suffices to make clear the decision and the short extracts we shall make from some of the opinions. The other fact is this: That at the time of the proceeding before the Probate Court, it *had no power or jurisdiction to deal with the settlement and distribution of estates*, its powers in that regard being limited to the *probate of wills* and the *granting of letters testamentary* and of administration.

The opinion of the Lord Chancellor is devoted chiefly to the discussion of the two questions adverted to in *Thorman v. Frame*, 176 U. S., namely, (1) that the *bare appointment* of an executor or administrator does not foreclose inquiry as to the domicile of the deceased, and (2) that the determination by a Probate Court of a question *not necessary* to its decision is not conclusive; and it refers only briefly and incidentally to the *reduced powers* of the Probate Court at the time of this decision (1860) from what had been those of the prior *Spiritual Courts* in matters of administration. So we pass, for the present, to the opinion of Lord Blackburn, who goes

directly to this point, and shall recur to the Lord Chancellor's opinion on the same point later.

Said Lord Blackburn (pp. 35-6)—italics ours:

“As to the first of these appeals, the appeal on the supposed ground that it was settled by the decision of Sir Creswell Creswell—either because it was a judgment *in rem*, or because it was a judgment *inter partes*, and the parties were the same—that the domicile of Don Juan Jose Concha at the time of his death was in England, it, I think, is a mistaken notion that it was so settled, and that it was a judgment *in rem*. Upon that point I attach *a good deal of weight*, as simplifying the question, to the fact that by the *Probate Act of 1857 the authority and power and jurisdiction* in England of the *Judge of the Court of Probate*, which Sir Creswell Creswell was at that time, were by the 23rd section *very much cut down* and were different from that which had been the jurisdiction of the Spiritual Court before.

“Speaking from memory (unfortunately I have not the section before me), he is to have the same jurisdiction as the Prerogative Court, but there is an express *proviso* that he is *not to have jurisdiction over suits for distribution*.

“This is taken away from him, or rather is not given to him, although it had belonged to the Spiritual Court before.

“Now, that, I think, makes a very considerable difference, when you look at it, as to what ought to be the effect of the judgment of Sir Creswell Creswell, the Judge of the Probate Court, as being a judgment *in rem* in the sense in which it decides matters conclusively.

“That, in my mind, takes away the applicability of the case of *Bouchier v. Taylor*, 4 Bro. P. C., 708, because Sir C. Creswell, when deciding, as Judge of Probate, that probate should be granted to the executors of this will, *had not to decide*, and not only *had not to decide*, but *could not then or at any other time decide*, what was the construction of that will, or what was its effect for the purpose of giving to legatees, or not giving to legatees. What he did decide was (and to that extent I think the decision was conclusive on everybody) that there was *an executor entitled to have probate in England* for the purpose of getting in and taking the property which was in England, and to that he was entitled if there was a will which made the executor *a good executor according to the law of England*; but I do not think that Sir Creswell Creswell *had any power* to say that the testator was or was not really a domiciled Englishman.”

Lord Blackburn also refers (p. 39) to the case of *Bouchier v. Taylor*, 4 Bro. P. C., as correctly deciding that a decision by the old Spiritual

Court on the domicile of a decedent was conclusive, because that Court *had jurisdiction of the distribution of estates*, as well as of the probate of wills and the appointment of executors and administrators, and he adds:

“But that can have no application here, where the Judge of the Court of Probate *had no jurisdiction to decide what was to be done with the residuary sum of the testator’s property* after all creditors who had a right to come upon it had been sufficiently paid off. *He had no jurisdiction to decide that*—that would be done by the Court of Chancery now—*it could not be done by the Court of Probate*. That being so, I think it is quite clear that this is not a decision *in rem* which would bind anyone.”

Recurring now briefly to the opinion of Lord Chancellor Herschell, we will not burden this brief with quotations bearing on the two points before alluded to and so well covered by the case in 176 U. S., but limit ourselves to an extract relative to the point elaborated by Lord Blackburn.

Said the Lord Chancellor (pp. 34-5)—italics ours:

“In the next place, it must be remembered that at that time” (when *Bouchier v. Taylor* was decided) “the Spiritual Court was a *Court of distribution* as well as a Court

merely to determine the validity of the testament, and to grant probate or administration; it was a *Court of distribution concurrently with the Court of Chancery*.

“It was said there by the noble and learned Lords in this House that the decision of a Spiritual Court would determine that question *for all purposes with which it had to deal*; it would determine it not merely for the purpose of saying to whom administration should go, but it would also determine it for any subsequent question which would arise in the same cause with regard to the *distribution of the estate*. That finding would be a finding of the Spiritual Court for both purposes; so that it was impossible to hold that the Court of Chancery, being merely a Court of *concurrent jurisdiction for the purpose of distribution*, would not be bound by the finding of the Spiritual Court *in a matter of distribution*, a finding between the same parties on the very point which in each case *had to be determined*.”

We digress to say that the relations subsisting between the old Spiritual Court and the Court of Chancery of England at the time of the decision in *Bouchier v. Taylor*, was precisely the same as now exists between the County Court and the Chancery Court of Tennessee; and the *jurisdiction* in probate and administration matters,

of these two English Courts was then precisely as is now that of the County and Chancery Courts, respectively, of Tennessee, as is fully shown by the statutes and decisions cited later on in this brief. The jurisdiction of the County Court of Tennessee, as a Court of *distribution*, is as full and ample as was ever that of the Spiritual Court of England, on that subject; and it is *original*, too, as was that of the old Spiritual Court of England, and that of the Chancery Court, as a Court of *distribution*, is likewise only *concurrent*, as was that of the English Court of Chancery. And it is just as illogical to say that the County Court of Tennessee, with jurisdiction to *distribute estates*, cannot determine *domicile* and thereby *ascertain the distributees*, as it was illogical to say the same thing of the old Spiritual Court of England.

This case of *Bouchier v. Taylor*, and the case of *De Mora v. Concha*, so much exploited by our adversaries in their briefs below, are direct authority, in principle, that the decision of the County Court of Hardin County, Tennessee, that Charles Baker was *domiciled in Tennessee* at his death, was within its jurisdiction and binding and conclusive as a decision *in rem*, as we argued below. And these cases also put at rest the illogical (not to say absurd) contention of

adversary counsel, permeating their entire brief below, that the *local domicile* of a decedent, at the place where the Court is sitting, is the *indispensable jurisdictional fact which alone can enable the Court to decide the question of domicile*—for that is what their whole argument, even here, comes to in its last analysis.

Before passing finally from these English cases, we wish to call attention to the American notes to *Concha v. Concha* in the publication from which we have quoted, and especially to the opinion of Mr. Justice Story in *Thompkins v. Thompkins*, 1 Story, 547 (Cir. Ct.), there quoted:

“The sentence or decree of the proper ecclesiastical Court, as to the *personal estate*, is not only evidence, but is conclusive as to the validity or invalidity of the will; so that the same question cannot be re-examined or litigated in any other tribunal. *The reason is*, that it being the sentence or decree of a Court of *competent jurisdiction*, directly upon the *subject-matter in controversy*, to which all persons who have any interest are, or *may make themselves*, parties for the purpose of contesting the validity of the will, it necessarily follows that it is conclusive between those parties. For *otherwise there might be conflicting sentences or adjudications upon the same subject-matter between*

the same parties, and thus the subject-matter be delivered over to interminable doubts, and the general rules of law, as to the effect of res judicata, be completely overthrown.

In short, such sentences are treated as of a like nature as sentences or proceedings *in rem*, necessarily conclusive upon the matter in controversy, *for the common repose and safety of mankind.*" (p. 46, 11 Eng. Rul. Cases.)

It remains only to confirm what we have said as to the jurisdiction of the County Court, in Tennessee, in matters of distribution.

The statutes and judicial decisions of Tennessee as contained in Shannon's Code and the published reports, are stipulated into the record—the stipulation appearing on page 232 of the transcript, but not embraced in the printed record; and it is only necessary to refer to them.

**Statutes of Tennessee on Jurisdiction of County Court in
Matters of Administration and Distribution.**

Section 6027, Shannon's Code, with such subsections as are pertinent, reads as follows:

"6027. *Original Jurisdiction.* — The County Court has original jurisdiction in the following cases:

(1) *Wills*.—The probate of wills.

(2) *Letters*.—The granting of letters testamentary and of administration, and the repeal and revocation thereof.

(3) *Administration*.—All controversies in relation to the right of executorship or of administration.

(4) *Accounts*.—The settlement of accounts of executors or administrators.

(5) *Partition and Distribution*.—The partition and distribution of the estates of decedents; and for these purposes the power to sell the real and personal property belonging to such estates, if necessary to make the partition and distribution, or if manifestly for the interest of the parties.”

There are numerous other subjects over which the jurisdiction is original and general, mentioned in other subsections.

The next succeeding sections are as follows:

“6028. The County Court shall have concurrent jurisdiction with the Chancery and Circuit Courts to sell real estate of decedents for distribution or partition. The mode of procedure in such cases in the County Court, shall conform in every respect to the rules and regulations laid down for the conduct of similar causes in the Chancery and Circuit Courts.”

“6029. And in such counties as have a County Judge, he shall have the powers above enumerated.”

“6030. Such Courts are expressly vested, over all subjects enumerated in the foregoing sections, with all the power and authority necessary and proper to the exercise of the jurisdiction therein conferred.”

Sections 4031 to 4046 relate to settlements of administrators and executors and to appeals in matters of dispute over such settlements.

Under the title, “*Distribution of Estates*”, are the following sections:

“4047. No executor or administrator shall take, hold, or retain in his hands more of the deceased’s estate than amounts to his necessary charges and disbursements, and such debts as he shall legally pay within two years after administration granted; but all such estate so remaining shall, immediately after the expiration of two years, be divided and paid over to the person or persons to whom the same may be due by law or by the will of the deceased.”

“4048. Any distributee or legatee of the estate may, after the expiration of two years from the grant of letters, apply to the County, Circuit, or Chancery Court of the county or district in which administration was

taken out, to compel the payment of his distributive share or legacy.”

“4049. The application shall be by bill or petition; shall set forth the claim of the applicant as legatee or distributee; shall allege that the assets of the estate are more than sufficient to pay the debts, charges and other claims, if any, entitled to priority, and be verified by affidavit.”

“4050. The proceedings, under such applications, shall be conducted as other equitable actions, and heard and determined summarily as soon as practicable.”

The immediately succeeding sections are, in substance, (4051) to punish personal representatives for the conversion of trust funds; (4052) declaring how hiership of persons claiming interests may be established; (4053) requiring refunding bonds for the protection of creditors; (4054) filing and recording refunding bonds; (4055) providing for *scire facias* against obligors in such bonds; (4056) for judgments and executions in such cases; (4057) requiring receipts from legatees and distributees for their shares when paid; and (4058) requiring the recording in full of such receipts.

Sections 6107 to 6114, under the title “Concurrent Jurisdiction”, prescribe the subjects of

which the Chancery Court has concurrent jurisdiction with the County or Circuit Courts, or with both. In substance, these provisions, as they affect the County Court are: that the Chancery and County Courts shall have concurrent jurisdiction over the persons and estates of persons of unsound mind and infants, and of the appointment of administrators in certain cases (not important to note in detail), and that the Chancery, Circuit and County Courts shall have concurrent jurisdiction of divorce, dower, and the sale, partition and distribution of the estates of decedents, infants, and tenants in common—the section on dower and sales for partition and distribution being as follows:

“6112. It (the Chancery Court) has jurisdiction, concurrent with the Circuit and County Courts, of proceedings for the partition or sale of estates by personal representatives, guardians, heirs, or tenants in common; for the sale of land at the instance of creditors of the decedent, if the personal property is insufficient to satisfy the debts of the estate; and for the allotment of dower.”

Other sections declare the right to administer as being, (1) in the widow; (2) the next of kin; and (3) the largest creditor appearing and proving his claim (section 3939); the place of admin-

istration upon the estate of a resident decedent to be, the county where he had his usual residence, and if he had a fixed place of residence in more than one county, then in any such county (section 3934); and the county in which and the conditions under which letters may be granted upon the estates of non-residents to be, (1) where the deceased had any estate, real or personal, at the time letters are applied for; (2) where any debtor of deceased resides; (3) where any debtor of a debtor of the deceased resides, his debt being unpaid when application is made; and (4) where any suit is to be brought, prosecuted or defended, in which the estate is interested (section 3935).

**Decisions of Tennessee on Jurisdiction of County Court in
Matters of Administration and Distribution.**

While the County Court in Tennessee has not general common law jurisdiction over all subjects, but has cognizance only of certain subjects specified in the statutes of the State, it has, nevertheless, over those subjects, a general and superior jurisdiction which entitles its judgments and decrees, pronounced within its field, to the benefit of all the presumptions, and to all the force and effect, which appertain to the judgments and decrees of Courts of general common law jurisdiction.

This has been the uniform holding of the Supreme Court of the State for a long period of time.

As early as 1845, in the case of *Brien v. Hart*, 6 Hum., 130, 133, this question was thoroughly considered and the Court, speaking of the County Courts, said:

“Our Courts of Probate are not inferior, in the technical sense of that term, as used upon this subject at common law, nor is this jurisdiction special and limited; on the contrary, it is *general, original* and *exclusive*. In the exercise of *such a jurisdiction* these Courts are entitled to the presumption that what they do is *rightly* done and on *just grounds*.”

(The italics in this and other quotations in this brief are ours.)

And after quoting from *Peacock v. Bell*, 1 Saund., 74, the noted rule of jurisdiction that “nothing shall be intended to be out of the jurisdiction of a superior court but that which appears expressly to be so; and, on the contrary, nothing shall be intended to be within the jurisdiction of an inferior court but that which is so expressly alleged”, the learned Court, in *Brien v. Hart*, added:

“Our Courts of Probate fall under the first category in this rule set forth.”

In a still earlier case, decided in 1840, *Wilson v. Frazier*, 2 Humph., 30, it was for the same reason held that administration could not be collaterally attacked because granted to the wrong person.

In *Railway v. Mahoney*, 5 Pick. (89 Tenn.), 311, decided in 1890, it was held that administration could not be collaterally attacked because the intestate, though a resident of the State, was not a resident of the county. And the Court in that case laid down what has been the settled law of Tennessee for three-quarters of a century, in the following language:

“It has long been settled in this State that as to matters of administration the County Court is a Court of general jurisdiction.

“In consequence it follows—first, that its judgment, exercised in the appointment of an administrator, need not recite the facts upon which it was made; and, second, that, being authorized to *determine for itself the existence of the facts* which authorize it to appoint an administrator on the estate of an intestate resident of Tennessee, its determination of such facts is *conclusive* in any collateral attack in another Court.

“Of course, the rule could not extend to a case where *no appointment could be legally made by any Court*; as on the estate of a living man. 4 Lea, 251.”

Numerous other cases, from 1840 down to the present time, have declared and upheld this rule as to the nature of the jurisdiction of the County Court in matters of administration, and the effect of its judgments and findings therein. The case in 4 Lea, 251, cited in the above extract, is an illuminating one on this rule and the reasons for it. That was the case of *D'Arusement v. Jones*, decided in 1880, and it deserves more than passing notice. It was the first case in Tennessee holding a grant of administration void upon collateral attack.

Administration had been granted upon the estate of Mrs. D'Arusement by the County Court of Shelby County, on petition and proof, satisfactory to the Court, that she had been absent from her home and unheard of by her friends and acquaintances for a period of more than seven years and was believed to be dead. The Court found as a fact that she was dead. The administrator, thus appointed, proceeded to foreclose a mortgage upon real estate securing notes for a considerable sum due the estate as shown by the public records, sold the land and disposed of the proceeds. Some years afterwards, Mrs. D'Arusement appeared and instituted proceedings against the purchasers of the mortgaged property for the sale of the same

lands in foreclosure, for the payment of the notes to her, which she produced. The defense was, that although the administration was *improperly* granted, and would, on application to the County Court, be recalled and revoked, yet it was not *void*; and consequently that the purchasers at the administrator's sale acquired title and Mrs. D'Arusement must look to the proceeds. But this defense was overruled, on the ground that Mrs. D'Arusement being a *living* person, there was no power in any Court to appoint an administrator upon her estate.

The question was a novel one in the State, was ably argued by some of its best lawyers, and was decided by a divided Court. It was again fully reconsidered on an application for rehearing. The question was also the subject of an able article, published about the same time, in the *American Law Review*, of May, 1880.

The majority opinion, which has since been adhered to and accepted as the law of the State, was delivered by Mr. Justice McFarland. Its reasoning is irresistible, viewing the question from the standpoint of the Tennessee statutes, and we shall ask indulgence to quote from it before passing from the County Court proceeding in the present case.

Now, as we have said, there is no doubt whatever that so far as the *granting of administration* is concerned, the County Court, under the Tennessee system, is a Court of *superior and general jurisdiction*, and its proceedings and decrees entitled to the full faith and credit due to the proceedings and decrees of other Courts of that dignity and class; and from which it follows that appellant's appointment as administratrix of her husband by the County Court of Hardin County, Tennessee, was valid and unimpeachable, collaterally, in that State; and that, under the equal faith and credit Act of Congress, it is unimpeachable in Kentucky.

But we contend, further, that the same jurisdiction of the County Court which protects against collateral attack its *appointment* of an administrator, extends to and similarly protects its *judgment and determination of the place of domicile* of the decedent; and while, so far as we can ascertain, this specific question has not been adjudged in Tennessee, we think it necessarily follows from the Tennessee statutes and decisions on the subject of administration, to which we have referred.

It is perfectly obvious that the *domicile* of the decedent within the State is *not an essential jurisdictional fact*, like that of the *death*; for the

jurisdiction arises and the Court may proceed, if the statutory requisites be shown, *wherever the domicile may have been*. But in all cases, the County Court to which application is made must determine, in the first instance, the place of residence of the deceased; for if a resident of the State, administration can be granted only in the county where he resided, whether any of his property be there or not; and it is only where he is a non-resident that administration can be granted under section 3935 above noted.

And in all cases the County Court must determine, in the second place, *how the estate is to be distributed*, for otherwise it could not *make distribution* as the statute empowers it to do; and in order to do this, it must determine the *domicile of the deceased*; and if there be a *foreign will*, section 3916 of Shannon's Code provides that a duly certified copy of it, after it has been probated in another State, may be filed and recorded in the County Court of the county, in this State, where the property disposed of by it is situated, and that such will shall thereupon have the same force and effect as if it "had been executed in this State, and proved and allowed in the Courts of this State".

The County Court determines all these questions just as other Courts determine the various

questions arising before them in the course of their exercise of their jurisdiction when once acquired. They are not *essentials* of the jurisdiction, in any proper sense, but are things done and questions determined in the course of the *exercise of jurisdiction*, resting upon the *fact of death* of the owner of the estate, and the *law of the State* conferring the jurisdiction in such cases upon the County Court.

Theoretically, therefore, under the statutes and decisions of Tennessee, whatever may be the decisions of other Courts under other statutes, the finding and judgment of the County Court as to the *place of domicile* of a decedent upon whose estate it grants administration, is within its *jurisdiction*, and not subject to collateral attack by a mere averment that such finding is not true.

Not only is this the theory of the Tennessee statutes and decisions we have referred to: it is the logical and *necessary consequence* of these statutes and such cases as *Railway v. Mahoney*, *Brien v. Hart* and *D'Arusement v. Jones*. The last named case is not only consistent with this view, but we think necessarily involves it and rests upon it, and so we now recur to it for a moment.

The controlling consideration with the Court was, that the Tennessee statutes did not contemplate or authorize administration upon the estates of persons *putatively* or *presumptively* dead, but only on the estates of *deceased persons*; and, therefore, the Court held, the *death* was the *basic fact, essential to the power of the Court to act at all*—the fact without which the County Court would have *no jurisdiction* either to *grant administration* or to *determine any question* with respect to the estate of such person. The *fact of death*, in other words, was held to be the *underlying jurisdictional fact* upon which depended the power of the Court to act in any way, under its administration or probate jurisdiction, which was conceded to be *superior and general*. The Court recognized the proposition that *such a jurisdictional fact* may always be inquired into, whatever the dignity of the Court, and we think that proposition a sound one; but this does not mean, of course, that the *record of procedure, and the findings thereon*, can always be *contradicted* collaterally and by extraneous evidence.

On the rehearing of this Tennessee case, it was urged by counsel—and the article in the *American Law Journal* gave some countenance to the view—“that the jurisdiction does not depend

upon the *fact* of death, but upon the *allegation of the fact* in the application for letters of administration"; but the Court rejected this contention and adhered to its original opinion wherein it said, among other things, on this subject:

"They (our statutes) simply authorize administration upon the estates of *deceased persons*, and if the person be not dead, the Court would be acting *ultra vires* to appoint an administrator. But it is said the Probate Court has jurisdiction to ascertain the fact of death, and its judgment finding that fact is conclusive until revoked or reversed. The general principle is, that the jurisdiction being conceded, the judgment is conclusive of all matters involved, but if the jurisdiction be disproven, then the judgment is void for all purposes. If it be conceded that the jurisdiction rests upon the existence of a particular fact, then it will not do to say that the finding of that fact by the Court is conclusive of its own jurisdiction, for this would be, to use a common expression, 'reasoning in a circle'. The judgment is conclusive, if the Court has jurisdiction, and its judgment that it had jurisdiction is conclusive of the jurisdiction. There may be, in some cases, confusion as to what constitutes the jurisdictional facts, but this would seem to be about as clear an illustration of it as could be found: That a Probate Court has assumed that a certain person is dead, and has

granted administration upon his estate, when in fact he was not dead.

“The proper distinction is illustrated in the case of *Allen v. Dundas*, 3 Term Rep., 125, where it was held that payment to one named as executor in a forged will, which had been presented and allowed in the prerogative Court, was a protection against the demand of one who had procured the proceedings on the forged will to be set aside and himself appointed administrator, *this* upon the ground that *the person being dead*, the Court had jurisdiction. But the Judges said that if the person *were not in fact dead*, the whole proceeding would be void. So that the jurisdiction rests upon the *fact of death*, and this being clearly shown untrue, it must result that the entire proceeding was without jurisdiction and void. For at least it sounds almost absurd to say that any man is to be bound by the judgment of a Probate Court that he is dead. The argument that the Court has jurisdiction to ascertain the fact of death is fallacious, for this must assume that the Court may decide the question either way, and if it concludes that the person is not dead, then it has no jurisdiction *for any purpose*. While the Court may hear evidence of the death, the fact is generally *assumed*, and if the Court undertake to put its finding of the fact in the form of a judgment, it gives it no greater validity. This

conclusion is sustained by the great weight of authority.”

It will be noticed that in the statutes we have referred to the words “residence” and “fixed residence” are used in the sense of *domicile*, though the word “domicile” is nowhere used; and that the findings of the County Court on the question whether a decedent was “resident”, or domiciled, in a particular county at the date of his death, is held to be conclusive against collateral attack. The question whether a man is resident or domiciled in one county or another *in the same State*, is one and the same in principle with the question whether he is resident or domiciled at one or the other of two places *in different States*. The holding that the County Court *has* jurisdiction to determine the former question, we submit is in effect a holding that it has jurisdiction to determine the latter; and if it *has the jurisdiction*, then its decision is immune from *collateral* attack in any *other* Court in Tennessee, and being so there, under the rule of comity, it is equally so in Kentucky.

Concluding on this branch of the argument, we wish to say we have not overlooked the numerous cases in other Courts, including the Supreme Court of the United States, holding the Probate Courts of other States to be *inferior*

Courts of *special* and *limited* jurisdiction, and giving to their orders and judgments only the limited effect ordinarily due to the action of such tribunals. Our answer to all such cases, as authority here, is two-fold: First, they are based on statutory systems, *materially different* from that of Tennessee; and, second, the *judicial construction* of these Tennessee statutes by the Courts of Tennessee is binding both in Tennessee and elsewhere. Whatever may be the theoretical views of other Courts as to what the jurisdiction of County or Probate Courts *ought to be*, or *may be* under *other statutes*, it is enough for our purpose that that jurisdiction and the *faith and credit* to be given to its exercise, *in Tennessee*, are such as we have stated them to be. This is the essence of the law of comity between the States of this Union. These proceedings must have the *same faith and credit in Kentucky* that they are *entitled to in Tennessee*.

We believe we have confirmed the statements we made in connection with the English cases of *De Mora v. Concha* and *Bouchier v. Taylor*, concerning the jurisdiction of the County and Chancery Courts of Tennessee as compared with that of the Spiritual and Chancery Courts of England at the time of the decision of the latter case; and we leave this branch of the argument with

the belief that a reversal of the decision of the Kentucky Court of Appeals might be rested, were it necessary, upon its refusal to give force and effect to the Tennessee *County* Court judgment as to the domicile of Charles Baker.

**FULL FORCE AND EFFECT GIVEN IN TENNESSEE
TO JUDGMENTS AND DECREES OF CHANCERY
COURT BASED ON CONSTRUCTIVE SERVICE.**

This proposition was not elaborated in our principal brief, but was there treated as conceded by adversaries and by the Kentucky Court of Appeals, as it really was. Out of abundant caution we now cite the pertinent statutes and decisions on the subject.

That the proceeding in the Tennessee Chancery Court resulting in the judgment or decree now relied on was in all respects regular and in accordance with the statutes and rules of practice in that State, has not, at any stage of this case, been questioned by adversaries; and the regularity of that proceeding, and, indeed, its conclusive force and effect, *in Tennessee*, are fully recognized in the opinion of the Kentucky Court of Appeals. The same is true of the authentication of the record of that proceeding—its regularity has not been at any time questioned. This ought

to, and perhaps does, relieve us of the necessity of supporting by citations any of the propositions so conceded; but for the information of the Court (should it desire such information), we submit a brief review of the statutes and decisions of the State on constructive service and the force and effect—the conclusive character—of judgments and decrees based on such service in cases wherein such service is authorized in lieu of personal service.

**Statutes on Jurisdiction of Chancery Court and on
Constructive Service.**

In attachment cases the levy of the attachment and publication, in the manner prescribed, are in lieu of personal service, and authorize the Court to proceed to determine the debt and subject the property attached. Shan. Code, 5279-5284. Such proceedings are governed, in Tennessee, by sections of the Code applicable alone to attachments. Shan. Code, sections 5211 to 5298, not pertinent here.

The proceedings here under consideration are governed by Chapter 3, of Title 9, of Part 3, of the Code. Part 3 comprehends "The Redress of Civil Injuries"; of which Title 9 is, "Of the Chancery Court"; and Chapter 3 of said title is, "Of the Practice of the Chancery Court".

Chapter 1 of Title 9, is, "Of the Jurisdiction of the Chancery Court," and begins with Article 1, on "Exclusive Jurisdiction", the first section of which (being section 6088 of the Code) is:

"The Chancery Court shall continue to have all the powers, privileges and jurisdiction properly and rightfully incident to a Court of equity by existing laws"—

construed to mean "by the statute and common law of the State." 13 Lea, 30.

Then comes Article 2 of this title, on "Concurrent Jurisdiction," the third section of which (being section 6109 of the Code) is:

"It shall have and exercise concurrent jurisdiction with the Circuit Court of *all civil causes of action*, triable in the Circuit Court, except for injuries to person, property or character, involving unliquidated damages."

And another section (already quoted), 6112, gives it concurrent jurisdiction with the Circuit and County Courts—

. . . of proceedings for the partition or sale of estates by personal representatives, guardians, heirs, or tenants in common, . . . and for the allotment of dower."

And next, Article 3, on "Personal and Local Jurisdiction," a section under which (being section 6121 of the Code) provides:

"The local jurisdiction of the Court of Chancery shall be subject to the following rules:

"(1) The bill may be filed in the chancery district in which the defendant or a material defendant resides, etc.

"(2) (Bills in regard to titles of lands.)

"(3) (Bills enjoining executions.)

"(4) Bills against *non-residents*, or persons whose names or residences are unknown, may be filed in the district in which the cause of action arose, or the act on which the suit is predicated was to be performed, or in which the *subject of the suit, or any material part of it, is.*"

Chapter 2, of Title 9, is, "Of the Pleadings in the Chancery Court," which we pass over as not important to notice here.

Chapter 3, of Title 9, entitled, as we have said, "Of the Practice of the Chancery Court," contains 14 "Articles," the third of which is entitled "Proceedings when Personal Service is Dispensed With"; and under it are the following Code sections:

“6162. Personal service of process on the defendant in the Court of Chancery is dispensed with in the following cases:

“(1) When the defendant is a non-resident of the State.

“(2) When, upon inquiry at his usual place of abode, he cannot be found, so as to be served with process, and there is just ground to believe that he has gone beyond the limits of the State.

“(3) When the sheriff shall make return on any leading process, that he is not to be found.

“(4) When the name of the defendant is unknown and cannot be ascertained upon diligent inquiry.

“(5) When the residence of the defendant is unknown and cannot be ascertained upon diligent inquiry.

“(6) When judicial and other attachments will lie, under the provisions of this Code, against the property of the defendant.”

6163: Requires the facts to be stated under oath in the bill, or by separate affidavit, or to appear by the return of the sheriff;

6164: That a rule or order shall be entered by the Clerk, upon the necessary oath or affidavit being made, requiring the defendant to appear

at a rule day to be named in the order, and make defense;

6165: That this order shall be published for four consecutive weeks in the newspaper mentioned in the order, or designated by the general rules of the Court;

6166: Provides that this order for publication may be made at any time after the bill is filed;

6167: Prescribes what the order of publication shall contain;

6168: Prescribes additional contents of the order when the defendant is *unknown*; and,

6169: Provides that the fact of publication may be proved by the affidavit of the printer, or actual production of the newspaper in Court.

By section 6179, under Article 5 of the same chapter, entitled "Proceedings in Default of Answer," it is provided that—

"The bill may be taken for confessed in the following cases:

.
"(2) When an order for his appearance having been duly made and published as above prescribed, the defendant fails to cause his appearance to be thereupon en-

tered, and to plead, answer, or demur, or obtain time to answer.”

And section 6181, in the same article, provides that—

“Whenever an order *pro confesso* is lawfully had, the allegations in the bill are to be taken as admitted, *except* in the case of infant defendants, persons of unsound mind, executors or administrators, bills for divorce, and bills without attachment of property against *non-residents* and persons whose names or residences are unknown.”

The next section, 6182, provides that infants and persons of unsound mind must appear by guardian or committee before the complainant can proceed; and the next, 6183, is as follows:

“In the other excepted cases, the complainant may proceed as if the allegations of the bill had been put in issue by answer not sworn to, with the right to set for hearing forthwith.”

Other sections provide for taking proof in such cases (6184), for defense at any time before final decree, as of course (6185-6), and for opening the decree and making defense by defendant or his representatives, on merits shown, within three years from date of decree, or within six months after notice by service of a copy of

the decree (6189-91); while section 4887, under Article 7, of Chapter 14, of Title 1, of Part 3, of the Code, allows an appeal in all cases.

We cite these statutes thus fully in order to confirm what we have said of the jurisdiction of the Chancery Court in Tennessee, and in order that the Court may have a fuller view of the system of Tennessee procedure in that vast number of causes which must arise in every State, wherein all the parties interested in property within the State cannot be reached by personal service of process. Some such judicial machinery exists, we dare say, in every State; and without it the administration of justice, in very many and very important cases, would be impossible.

Now, these are the statutes (with the rules of law applicable to them) which govern in the present case, and *not* those relating to *attachments for debt* and the decisions upon them.

Generally, on Cases Based on Constructive Service.

Cases coming under these statutes involve three essential elements: (1) a *subject matter*, in the form of property, which, or *some material part of which*, is *physically within* the jurisdiction of the Court whose action is invoked; (2) *joint or conflicting claims upon or interests in*

that subject-matter, by persons residing or domiciled in *different territorial jurisdictions*; and (3) *absence* from the territorial jurisdiction of the Court proceeded in, of one or more of such claimants.

Obviously this subject-matter may be *any kind of property*. It may be lands, or chattels, or mere choses in action, for all these are property. And, of course, it may be the *estate* of a deceased person, consisting of all these classes of property.

The subject matter of the case in the Chancery Court of Hardin County, in question here, was the *estate* of Charles Baker, deceased. A substantial part of that *estate* was physically located in Hardin County, Tennessee. All his *lands* were there. *Debts* due him, in a large sum, were there—the debtors lived there. He had *moneys* there. We pass by for the present the *corporate stock*, for while the certificates were physically there, the corporation being in Kentucky, the authorities are not in agreement as to the legal *situs* of the stock; although we think the sounder view is that the legal *situs* of corporate stocks, for the purpose of *intestate succession*, is the domicile of the owner, and, as personal property, they are governed by the law of the deceased owner's last domicile (*Lowndes v. Cooch*, 87 Md., 478; 22 Am. & Eng. Enc. Law, (2d Ed.),

1356; 18 Cyc., 1231, and numerous cases there cited), but it is not at all material, in our view, where the actual *situs* was. It is enough that a *material part of the estate*, both real and personal, of Charles Baker, was in Hardin County, Tennessee. The real *subject-matter* of that suit was unquestionably the *estate* of Charles Baker, and a *material part of it*—in fact, all of it, except the stock and the debt against Baker, Eccles & Co.—was physically within the jurisdiction of the Hardin County Chancery Court; and, as we have seen, the lawful administration of that estate was there; and the administratrix was there, charged by law with the duty of distributing the personal estate in her hands; and as the lawful *domiciliary* administratrix, which she claimed and was adjudged to be, she was invested with the *title of all the personal estate* of her intestate *wherever situated*, including the corporate stocks whatever their legal *situs* (18 Cyc., 1228, 1231, and cases cited); and the widow was there, entitled, in her individual right, to dower in Charles Baker's lands, and claiming to be sole distributee of his personalty.

Then there were the *conflicting* rights and claims of the widow and the mother and brother of deceased, respecting his lands, and the *conflicting* claims of the widow and mother of the deceased, respecting his personal estate.

And, finally, there was the *absence* from the State, and from the territorial jurisdiction of the Court, of two of these claimants of this property.

Now, assuming that the mother and brother would not go to Tennessee and there join the widow in the settlement of these conflicts in the Courts of that State, and that the widow would not go to Kentucky and there join the mother and brother in their settlement in the Courts of that State, pray how, on our adversary's theory, could they *ever be settled*? Neither side could be compelled, by any process known to our laws, State or Federal, to go to the State of the other side and submit to its jurisdiction. If the Courts of Tennessee could not settle the controversy at the instance of the widow, and bind the mother and brother, how could the Courts of Kentucky settle it at the instance of the mother and brother, and bind the widow? What *more* power have the Courts of the one State than the Courts of the other in such a case? And if the Courts of neither State have the power to *decide* the matter and *make an end of it*, where does such power reside?

Is it possible that *no Court*, anywhere, can *finally settle* such a question, unless *all* the parties interested come voluntarily before it and

submit to its jurisdiction? If so, our jurisprudence is sadly out of joint and not at all creditable to the intelligence of the age.

The case is not nearly so complicated as many that may be easily imagined and many that we know must often arise in this country. It is no extravagance to suppose cases where, by reason of the location of property of a decedent in a half dozen or more States, the diversity of the laws of distribution existing in such States, and the residence of the claimants of the succession in as many States, a far more complicated situation would be presented, as illustrated in our principal brief—though differing not at all in the applicable legal principles.

In all such cases, the rights of all the claimants, as to the personal estate, are dependent upon a single question of *status*—the *domicile*, at his death, of the deceased owner. Of course, as to *lands*, it may be conceded that their succession is governed by the *lex loci rei*; but it is everywhere held that the succession of *moveables*—personal property—is governed by the *lex loci domicilii* of the owner. Nor is the question at all affected by the recognized right and power of each State to protect its own citizens *as creditors*, even as to *moveables* physically within its terri-

torial limits, by refusing to permit their removal until domestic creditors are paid; for it is only the *right of succession* that is involved in the cases we have supposed and in the present case, and that is always *subject to the claims of creditors*.

But while the *rights of the parties* are dependent upon the *domicile*, as it may be finally determined, domicile is neither the *subject-matter* of the suit nor the *essential jurisdictional fact*; it is only a *material and issuable fact*, which is concluded by the decision once made by a Court with jurisdiction of the subject-matter and parties, according to the law of the tribunal so deciding, even though it be a mere Probate Court. 2 Black on Judgments (2d Ed.), sections 635, 639, 643, 645, 646.

Proceedings of the character under discussion are really proceedings *quasi in rem*, and governed by the principles applicable to proceedings *in rem*. The *res*, in the present case, is what we have designated as its subject-matter—the *estate of Charles Baker*. A great many proceedings, involving *status* of persons and property, or the rights of parties with respect to property in the custody or jurisdiction of the Court, are so treated; as for examples, inquisitions of lunacy; orders of naturalization; proceedings for di-

vorce; questions of identity, legitimacy and pedigree; bankruptcy and insolvency; probates and contests of wills and other probate adjudications; judgments on taxes and assessments; condemnations of property for public use; establishments of roads and boundaries; foreclosures of liens; decrees for sale for partition or other lawful purposes; administration of estates; and numerous others, where no *personal judgment* is sought by one party against the other, but only the determination of *their rights and relations* with respect to some *status* or *thing* in controversy. 2 Black on Judgments (2d Ed.), Chapter 20, on Judgments *In Rem*.

So, in *Woodruff v. Taylor*, 2 Vt., 65, speaking of the probate of a will, the Court said:

“The proceeding is in form and substance *upon the will itself*. No process is issued against any one, but all persons interested in determining the *state or condition* of the instrument are *constructively* notified, by a newspaper publication, to appear and contest the probate; and the judgment is, *not that this or that person shall pay a sum of money or do any particular act*, but that the instrument is, or is not, the will of the testator. It determines the *status of the subject-matter* of the proceeding. The judgment is upon the thing itself; and when the

proper steps required by law are taken, the judgment is conclusive, and makes the instrument, as to all the world (at least so far as the property of the testator within this State is concerned), just what the judgment declares it to be."

And so, Mr. Black declares (section 639), citing *Holmes v. Oregon, Etc., R. R.*, 9 Fed., 229, and *Appeal of Willetts*, 50 Conn., 330:

"Where a State statute provides that administration of an intestate estate shall be granted by the County Court, when the intestate 'at or immediately before his death, was an inhabitant of the county', etc., the decision of that Court upon the question of inhabitancy, properly presented for its adjudication, is not open to examination in a subsequent proceeding in a Federal Court."

And to the same effect are many cases in Tennessee; some of which we have already cited. See *Williams v. Saunders*, 5 Cold., 60.

And such is the settled law of England, even as to *foreign* judgments in the proper sense, where the relations between the governments are mere matters of voluntary or conventional *comity*, without the sanction of a *constitutional* requirement of equal faith and credit, such as affects the relations to each other of the *sister*

States of the American Union. Says Mr. Black (section 823), of the case of *Daglioni v. Crispen*, L. R., 1 House of Lords, 301:

“In a recent English case it appeared that, in a *foreign Court*, upon the death of a person domiciled in the country where that Court had jurisdiction, C. claimed to be the *natural son* of the decedent, and as such natural son to be entitled by the law of that country to *inherit* his father's property, and alleged that his father was *of a particular station in society* (which circumstance allowed of such a claim by his natural son), and that the father had died *domiciled in the country*, and had died *intestate*; and the *foreign Court* found all these allegations in his favor. It was held that the Probate Court in England *was bound by the judgment of the foreign Court*, and had, therefore, *rightly* admitted C. to be heard as *contradictor to a will*, set up in the latter country as having been made by the decedent disposing of his *personal property* there.”

It is scarcely possible to conceive of a single case involving *more* different elements of *status* and peculiar *local rights*, going to the ultimate establishment of the ownership of the whole personal estate, than are to be found here: the *natural son status* of the claimant, the *social status* of the father, the resulting *right to inherit*, the

domicile of the father, and the *intestacy* of the father; and yet the decision of these questions in favor of the son by a *foreign Court*, with no pretense of *actual notice* to the legatees in England, was held, in effect, to conclusively establish the right of this natural son to the *whole personal estate* of his father, to the utter negation and nullification of his father's will in England.

TENNESSEE DECISIONS.

The validity of proceedings conducted under the statutes we have quoted, relating to non-residents, has often been before the Supreme Court of Tennessee. In one of the earlier cases, *Kilcrease v. Blythe*, 6 Humph., 378 (1845), the whole subject came under review and was ably argued by Hon. Archibald Wright, afterwards one of the Judges of the Supreme Court, and Hon. Neil S. Brown, afterwards Governor, upon a record of a former judgment under these statutes which was exceedingly informal and would, it was conceded, have been reversed on writ of error or appeal; but it was held immune from attack in a subsequent proceeding.

Briefly, the case was this: One Brown, it was alleged, had furnished Kilcrease with certain land warrants, to be entered and grants obtained

for the equal benefit of the two; Kilcrease entered the lands and obtained grants *in his own name*, and afterwards died; Brown filed his bill in the Chancery Court of the district in which the lands were located, against the heirs of Kilcrease, who were then non-residents, living in Mississippi, and alleged to be infants and of whom one Townsend, also made defendant, was "supposed to be guardian," praying to recover and have divested out of them and vested in himself one-half of these lands. After two returns of "not found" by the sheriff, and an affidavit by the complainant of the non-residence, an informal order was entered by the Clerk that publication be made in a certain "newspaper of the town of Nashville" for six successive weeks, but fixing no *time* for the appearance of defendants, and indicating no *purpose* for which they were to appear, and there was no newspaper or affidavit of publication found in the record; and at a subsequent term, an order *pro confesso* was taken, reciting that "it appeared to the satisfaction of the Court that publication has been made for the defendants according to the order heretofore made in this Court"; but no such *previous* order of the Court was shown, nor did there appear to have been any appointment of a guardian *ad litem*. There was final decree for complainant according to the prayer of the bill.

Subsequently, in an action of ejectment by the heirs of Kilcrease against Brown's vendee, this decree was relied on in defense, as a muniment of title. The plaintiff insisted it was void, but there was judgment for the defendant, and on appeal this was the only question. The judgment was affirmed, the Court holding that the suggested defects were mere *irregularities* not affecting the *jurisdiction*, and that the recital of the decree of the Chancery Court that it appeared *to its satisfaction* that publication had been made according to its previous order, could not be contradicted collaterally; that, being a superior Court of general jurisdiction, every reasonable presumption must be indulged in favor of its proceedings, and that, having jurisdiction of the subject matter and parties, its decree was conclusive against attack in another suit, however irregular and defective in form its proceedings may have been.

This case of *Kilcrease v. Blythe* has been ever since followed and many times cited and re-affirmed by the Supreme Court of Tennessee. It has been cited and followed in the following, among other cases:

Hopper v. Fisher, 2 Head, 253 (1858): Holding Chancery Court a *superior* Court, and that upon collateral attack of its decree it will be presumed that infants represented by guardian *ad*

litem were properly before the Court by personal service of process or by proper notice.

Gilchrist v. Cannon, 1 Cold., 581 (1860) : Holding recital in decree of Chancery Court that publication was duly made as to heirs of non-resident decedent sufficient, unless it appear *from something in the record* that the fact was *positively otherwise*.

McGavock v. Bell, 3 Cold., 513 (1866) : Holding that where Chancery Court, or other Court of general jurisdiction, has jurisdiction of subject matter and acquires jurisdiction of parties, its proceedings cannot be held to be void, and that in this respect it is not material whether the jurisdiction be inherent or statutory, provided the statute be of a *general* nature.

Townsend v. Townsend, 4 Cold., 70 (1867) : Holding that probate of a will or grant of letters of administration, in the County Court cannot be attacked in the Chancery Court, even where the probate or grant was had more than *thirty years* after death of testator or intestate, where statute prohibited such grant after 20 years, except to distributees who were minors or *femes covert* at the death of the decedent, and to them not after 30 years; that the probate and grant having been *accomplished* will stand until set

aside under a proper proceeding in the granting Court.

Claybrooke v. Wade, 7 Cold., 555 (1870): Holding that recital in Chancery Court decree that notice had been duly given by publication is presumed true, and that "such presumptions are necessary to uphold the judicial tribunals of the country."

Walker v. Cottrell, 6 Baxt., 275 (1873): Holding recitals in orders and decrees of superior Courts that publication had been duly made sufficient, unless contradicted *by the record itself*, and they cannot be contradicted by extraneous evidence.

Howard v. Jenkins, 5 Lea, 175 (1880): Holding recital in order *pro confesso* that "publication has been regularly made" sufficient on either direct or collateral attack in absence of anything *in the record* showing recital untrue.

Allen v. Gilliland, 6 Lea, 521 (1880): Holding that all presumptions are made in favor of the judgments and decrees of superior Courts, and that orders to the effect that publication was made "according to law" are sufficient without statement of details.

Davis v. Reaves, 7 Lea, 585, 606 (1881): Holding it well settled in Tennessee that if the Court

have jurisdiction of the person and subject matter, its proceedings cannot, even at the instance of an infant, be held to be void as to third persons claiming under its judgment or decree, after the final disposition of the case, whether the jurisdiction be inherent or statutory, the statute being of a general nature.

Posey v. Eaton, 9 Lea, 500 (1882): Holding decree under which lands of decedent are sold cannot be subsequently attacked on averment that personalty had not been exhausted, or that the administrator filing the bill had not been legally appointed, or that the Judge or Chancellor trying the case was of kin or counsel to the parties, and therefore incompetent; and that nothing short of *want of jurisdiction* will avail.

Harris v. McLanahan, 11 Lea, 181 (1883): Holding that recitals in judgment or decree of superior Court are conclusive unless positively contradicted *by the record itself*.

Pope v. Harrison, 16 Lea, 81 (1885): Holding that "In a collateral attack upon the proceedings of a Court of general jurisdiction, it is not necessary that the jurisdictional facts should affirmatively appear upon the face of the record; it is sufficient if the record, with its legal intendments and presumptions, shows these facts."

Robertson v. Winchester, 1 Pick. (85 Tenn.), 171, (1886): Holding that decrees of superior Courts are valid on collateral attack, notwithstanding irregularities in the proceedings, if it appear in the record that the Court acquired jurisdiction of the person of the defendant and of the subject-matter; and that in such case "if the defendant is a non-resident, jurisdiction over his person is sufficiently shown by recitals in orders on the rule docket that publication was made, and in subsequent decree that the cause was heard on order *pro confesso*; or, in the absence of all other evidence, by the mere recital in the final decree that the cause was heard on order *pro confesso*, as it would be presumed such order was made on publication as required by law."

Franklin v. Franklin, 7 Pick. (9 Tenn.), 119, (1891): Holding and reaffirming that County Court is a Court of general jurisdiction as regards administration, and that its appointment of an administrator upon the estate of a decedent as an intestate, is not void on collateral attack, where deceased was not in fact an intestate and his will was subsequently discovered and probated.

Reinhardt v. Nealis, 17 Pick. (101 Tenn.), 169, (1898): Holding that judgment of superior Court of general jurisdiction cannot be im-

peached collaterally by the parties to it where a want of jurisdiction is not apparent *on the face of the record*.

Wilkins v. McCorkle, 4 Cates (112 Tenn.), 688, (1904): Holding, in reference to a decree against non-residents, the propositions embodied in the following head notes:

“Upon a collateral attack upon a judgment or decree of a Court of general jurisdiction by parties or privies thereto, the rule is that such judgment or decree cannot be questioned except for want of authority over the matter adjudicated upon; and this want of authority must be found in the record itself.”

“In the absence of anything in the record, where the decree is collaterally attached, to impeach the right of the Court rendering such decree to determine the questions involved, there is a conclusive presumption that it had such right.”

“Whether the Court acquired jurisdiction of the persons appearing to be parties to a suit, where the decree rendered therein is collaterally attacked, must be determined from the face of the record.”

“In the examination of the record of a suit, where the decree is collaterally at-

tacked, to determine whether the Court rendering the decree had jurisdiction of the persons appearing to be parties thereto, every reasonable presumption will be indulged in favor of the jurisdiction."

"The affidavit of non-residence of a defendant required to be made before the non-residence notice is published may be made on a separate piece of paper, and need not be attached to the bill; and on collateral attack, it must be presumed that the proper affidavit was filed, although there appears to be no oath to the bill."

That the Supreme Court of the United States has often declared substantially the same doctrine laid down in these Tennessee cases, will appear from the following and many other cases in this great Court: *Mills v. Durgee*, 7 Cr., 484; *Voorhies v. Jackson*, 10 Pet., 449; *Cooper v. Reynolds*, 10 Wall., 308; *Penoyer v. Neff*, 95 U. S., 714; *Applegate v. Lexington*, 117 U. S., 255; *Huling v. Kaw Valley, Etc.*, 130 U. S., 559; *Arndt v. Griggs*, 134 U. S., 316; *Hanley v. Donohue*, 116 U. S., 114; *Andrews v. Andrews*, 188 U. S., 14; *Tilt v. Kelsey*, 207 U. S., 43; *Burbank v. Ernst*, 232 U. S., 162. It is the generally accepted rule with reference to the judgments and decrees of Superior Courts of general jurisdiction in any given field.

LEGAL SITUS OF CORPORATE STOCKS FOR PURPOSE OF SUCCESSION OR DISTRIBUTION.

The argument, so far, has proceeded upon the assumption that the technical legal *situs* of these stocks was immaterial, and this is true, in the sense that it is not at all *necessary* to the integrity of our position that such *situs* be held to be in Tennessee, for the reasons already indicated.

But we have suggested, as the sounder view, that the *situs* was in Tennessee (assuming, as the Tennessee Courts decided, that the domicile of the owner was there), and that, at all events, upon the assumption of the Tennessee domicile of the owner, the *situs* was in Tennessee *for the purpose of the legal succession of the title* upon the death of the owner; and it is upon this point that we now offer some further observations.

The authorities, as we have also suggested, are not at all agreed upon the exact nature and qualities of corporate stocks, in all respects, nor upon their legal *situs*, for all purposes.

Ordinarily, their *situs* is generally held to be the State or country of the corporation. But whether, for this or that special purpose, they are to be considered as following the domicile of the owner, or remaining always at the domicile of

the corporation, or whether they are to be treated as separate *choses in action*, like notes and bonds, or be assimilated to the interests of *partners*, or the interests of *common owners* of franchises and intangible things—these and other puzzling questions have arisen and been variously decided. But we are not here concerned with these questions and shall not go into them. There is, we think, substantial agreement upon the *essentials* of our contention as to the *right of succession*.

These *essentials* are two in number: (1) that corporate stocks are *personal property*, and *not* real estate—and this we understand to be everywhere conceded; and (2) that while the succession of *real estate* is fixed and controlled by the *lex rei sitate*, that of *personal property* is fixed and controlled by the *lex domicilii* of the owner—and this is everywhere conceded.

Now, it is our contention that it *necessarily* follows from these two propositions that the *domiciliary administrator* of an intestate decedent, as the representative of the distributees, *takes title as such to all of the decedent's personal property*, including his corporate stocks wherever the corporations may be located; and that the authorities support us in this contention. See authorities on this subject cited on pages 32

to 36 of our principal brief, which citations need not be repeated here.

Now, if it be assumed, as we think it must be, that the domicile of Charles Baker at his death *was in Tennessee*—as was adjudged by both the County and Chancery Courts of that State—then it follows, as a necessary consequence of the principles established by the authorities we have cited and quoted, that not only did the plaintiff in error, Mrs. Josie C. Baker, as his *domiciliary* administratrix, take *title* to the *corporate stocks* of her intestate in the corporation of Baker, Eccles & Co.; and the *debt due him* by that corporation, but the *legal situs* of both that stock and that indebtedness was *in Tennessee* for the full purposes of such legal ownership by the domiciliary representative and the succession and distribution thereof according to the laws of that State.

Any other view would manifestly lead to great confusion—to the uprooting or ignoring of fundamental principles as old as the common and civil laws; and this view is not at all impaired or weakened by the *consistent* principle that, by reason of the physical presence of the corporation and debtor in Kentucky, the latter State has the fullest jurisdiction and power to protect its own citizens, who may be *creditors* of the de-

ceased, by preventing the removal of the property until they are satisfied, and for that purpose may, if it chooses, require *administration* there and permit removal of the surplus only. But here there are no Kentucky creditors, and consequently no occasion for the exercise by that State of its acknowledged powers.

It is respectfully submitted that the judgment of the Kentucky Court of Appeals should be reversed and the cause remanded for the purpose of granting and making effectual the relief sought by the plaintiff in error.

JNO. A. PITTS,

E. W. ROSS,

Attorneys.

Office Supreme Court,
FILED
OCT 10 1916
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 115.

**JOSIE C. BAKER, INDIVIDUALLY AND AS ADMINISTRATRIX
OF CHARLES BAKER, DECEASED, PLAINTIFF IN ERROR,**

vs.

**BAKER, ECCLES & CO. AND AUGUSTA H. BAKER,
INDIVIDUALLY AND AS ADMINISTRATRIX OF CHARLES
BAKER, DECEASED, DEFENDANTS IN ERROR.**

BRIEF OF DEFENDANTS IN ERROR.

CHARLES K. WHEELER,
Of Paducah, Kentucky,
Attorney for Defendants in Error.

**DANIEL HENRY HUGHES,
JAMES GUTHRIE WHEELER,**
Of Counsel.

(24,680)



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**IN ERROR TO THE COURT OF APPEALS OF THE STATE OF
KENTUCKY.**

BRIEF FOR DEFENDANTS IN ERROR.

The Facts.

Since this court does not "sit to review the findings of facts made in the State court, but accepts the findings of the court of the State upon matters of fact as conclusive and is confined to a review of questions of Federal law within the jurisdiction conferred upon this court" (Waters-Pierce

Oil Company *vs.* Texas (No. 1), 212 U. S., page 97; *Quimby vs. Boyd*, 128 U. S., page 488; *Egan vs. Hart*, 165 U. S., page 188), there should be no disagreement about the facts. However, certain statements are made in opposing counsel's brief under the title of facts that are misleading. They say the decedent at his death had in Tennessee "personal property consisting of money and rents and debts due him amounting to from one thousand to twelve hundred dollars." This fact is found by the Court of Appeals to be:

"In view of the admitted fact that Charles Baker, at the time of his death, owned both real and personal estate in Hardin County, Tennessee."

If we look beyond the opinion of the court to the pleadings, it appears that Charles Baker and his brother jointly owned a tract of land; that the rent for the year 1912, amounting to between eight hundred and one thousand dollars, was unpaid; his undivided interest in the rent was all of the personal property owned by him in Tennessee. Again, it is stated:

"He died suddenly on September 1st, 1912, in Humphreys County, Tennessee, while he was on his way from Paducah to Savannah."

The fact as to this, as found by the Court of Appeals, is:

"In September, 1912, while en route to his old home in Tennessee for a visit, he died while on board a steamboat in Humphreys County. * * * About an hour before he died, he told the Captain of the steamboat on which he was being carried on his expected visit to Savannah, that he was going to Savannah and would probably stay there until after the fair, and was then coming back to Paducah and would vote for Wilson. * * * He had no business interest in Tennessee, except the land that had been given to him, and that was rented out" (Record, page 102).

Again, it is stated that the appointment of plaintiff in error as administratrix of the estate of Charles Baker by the County Court of Hardin County "is conceded by adversaries that this appointment was regular, lawful, and valid."

It is conceded that the appointment was regularly made; that the decedent owned property within the State of Tennessee and the county named, and therefore under the local law the probate court had the right to appoint an administrator of his estate. Plaintiff in error resided with her husband in Paducah, who, according to the opinion of the Court of Appeals, "died a resident of Kentucky, and accordingly the personal estate owned by him at his death, and here in controversy, had a situs in this State" (Record, page 94).

After his death she removed to Hardin County, Tennessee, carrying with her the certificates of stock owned by decedent in the Kentucky corporation, spoken of as Baker-Eccles & Company—the certificates of stock which adversary counsel say were exhibited to the Chancery Court of Tennessee; she obtained the stock from a local bank in Paducah, where it had been deposited in a strong box by the decedent. The fact of exhibiting the certificates of stock to the Tennessee court, and the manual possession thereof by the plaintiff in error, in nowise affected the situs of the property interest in said corporation, as we shall see later on.

ARGUMENT.

In the circuit court, and also in the Court of Appeals, opposing counsel vigorously urged that the judgment of the County Court of Hardin County, Tennessee, determining the domicile of the decedent was in that county, is conclusive on all persons wherever domiciled; that such court under the law of Tennessee is a court of original and superior jurisdiction in all matters of probate and settlement of decedent's estate, including the right to decide the domicile of decedent; that the adjudication by it of the domicile of the deceased concluded the defendant in error, Mrs. Augusta H. Baker, as to all property within or without the State of Tennessee. That position is now abandoned. The brief says:

"A similar point was made and is preserved in the record on the judgment of the County Court in Tennessee, which granted the letters of administration; but conceiving that owing to the limited jurisdiction of that court and the summary and *ex parte* nature of the proceedings therein, there is ground for doubting the conclusiveness of its finding as to domicile—especially as such finding was not necessary to its lawful grant of letters of administration—we do not emphasize on this motion that aspect of the case."

Because of that position the Court of Appeals devoted much attention to the binding force of the county court judgment; that was also the reason why the point is extensively combated in the brief of defendants in error on the motion to dismiss. It was also claimed below that the judgment of the chancery court of Tennessee is conclusive, not only as to persons in that State served with process, and as to property within the State, but as well as to all persons wherever domiciled, whether served with process or not, and as to all property owned by the decedent at the time of his

death wherever situated. Now, it is admitted "that a personal judgment against a nonresident, upon publication or other constructive service without actual service or appearance, is void." But it is stated this "proposition is not at all vital or even involved here," because the proceedings in Tennessee in the chancery court were not "one *in rem* against the particular physically located property which may be in the hands of the administrator," nor "is it an action *in personam* against the distributees," but "the subject-matter of this suit is rather the *status* of the intestate at his death, than his estate," and thus is developed the crux of the argument.

I.

Status is a relation of a person to another or to the State. A judgment of status is, of necessity, personal. Status cannot be predicated of property; the status of an individual being fixed, the site of property is an incident thereto. The dead have no status, since they can have no relation to the living. When the decedent ceased to live his status ended; immediately title to his property passed to the distributees, subject to the claims of creditors. In a limited sense the title did not *vest* immediately, for the law endows the personal representative, administrator, with the temporary trusteeship of the property, which trusteeship carries with it the right of possession and the nominal title. If it be true that there is in law such a thing as a *judgment* of status, which in its operation is neither *in personam* nor *in rem*, it by no means advances the position of opposing counsel, for—

"The very rule that a personal status accompanies a man everywhere, is admitted to have this qualification, that it does not militate against the law of the country, where the consequences of that status are sought to be enforced."

(5 Barn. & Cres., 455; Story on Conflict of Law, page 122, section 87.)

If the proceedings in Tennessee are what adversary counsel insists, nevertheless in Kentucky, where the consequence of the judgment is sought to be reaped, it is subject to the laws of this State. It would be a most anomalous procedure if the title to property could be divested by indirection, as claimed here, when the judgment of a court obtained in the ordinary way would be void as to all persons not served with process.

The judgment of a court must, of necessity, be one that affects the person or the property of the individual, indeed no other form of judgment is known to the law, there is no such thing as a judgment of status that does not affect a person. Status relates alone to the person, and a judgment thereon, of necessity, is personal. The title to the personal property of the decedent did not lapse upon his death; it vested in some one somewhere. It is argued that it passed to the domiciliary administratrix; that, such being the case, the distributees had no interest therein, and by innuendo it is suggested that, assuming the plaintiff in error to be the domiciliary administratrix and therefore the title-holder of all the personal property of the decedent wherever located, she only was a necessary party to the litigation. The infirmity of the argument is twofold: First, the title of an administrator is by no means of that absolute and unqualified character; second, the proposition is based upon the assumption that the domicil of the deceased was in Tennessee.

II.

It is undoubtedly true that the personal estate of a deceased person vests in the domiciliary administrator, and such is the case as to property having a situs in a State foreign to the domicil of the decedent; nevertheless the rule must be taken with qualifications and exceptions to this extent: the adjudication of domicil by a court in an action where the distributees are not served with process will have

no force or effect beyond the limits of the State. Such a judgment has no extraterritorial force, nor is it true that the Kentucky judgment results in a "segregation" of the decedent's estate. The Kentucky court, in determining the devolution of the property of the decedent situated within the borders of that State, exercised a right always claimed by courts. If it be admitted the domicile of the deceased was in Tennessee, it by no means follows that a court of Kentucky is by comity required to transmit property found within its borders to the foreign administrator for distribution. The question turns upon who is the domiciliary administratrix; that is a fact which was considered and decided by the Kentucky court.

"Where administrators are appointed in different States, personal property coming into the hands of each administrator in such States, is made subservient to the rights of creditors, legatees and distributees who are resident within the Country."

(Story on Conflict of Law, section 513, page 843.)

This question was exhaustively considered by Judge Story in *Harvey vs. Richards*, 1 Mason Reports, 381. The argument is made there that it is impracticable to "segregate" an estate; that it must be treated in law as a unit, and as a consequence thereof must finally be distributed by one administrator. The answer to the argument is as follows:

"The rule, that distribution shall be according to the law of the domicile of the deceased, is not founded merely upon the notion that movables have no situs, and therefore follow the person of the proprietor, even interpreting that maxim in its true sense, that personal property is subject to that law which governs the person of the owner. * * * The correct result of these considerations upon principle would seem to be, that whether the court here ought to decree distribution or remit the property abroad, is a matter, not of jurisdiction, but of judicial discretion,

depending upon the particular circumstances of each case; that there ought to be no universal rule upon this subject; but that every nation is bound to lend the aid of its own tribunals for the purpose of enforcing the rights of all persons, having a title to the fund, when such interference will not be productive of injustice or inconvenience, or conflicting equities. It is further objected, that a rule, which is to depend for its application upon the particular circumstances of each case, is too uncertain to be considered a safe guide for general practice. But this objection affords no solid ground for declining the jurisdiction since there are an infinite variety of cases in which no general rule has been or can be laid down, as to legal or equitable relief, in the ordinary controversies before judicial tribunals. * * * Another objection, addressed more pointedly to a class of cases like the present, is the difficulty of settling the accounts of the estate, ascertaining the assets, what debts are separate, what desperate, and, finally ascertaining what is the residue to be distributed, and who are the next of kin *entitled to share*. And to add to our embarrassment, we are told, that we cannot compel the foreign executor to render any accounts in our courts. I agree at once, that this cannot be done, if he is not here; but I utterly deny, that the administrator here cannot be compelled to account to any competent court for all the assets, which he has received under the authority of our laws. And if the foreign executor chooses to lie by, and refuses to render any account of the foreign funds in his hands, so far as to enable the court here to ascertain whether the funds are wanted abroad for the payment of debts or legacies, or not, he has no right to complain, if the court refuses to remit the assets, and distributes them among those who may legally claim them. And as to settling the estate, or ascertaining who are the distributees, there is no more difficulty than often falls to our lot in many cases, arising under the ordinary probate proceedings."

The decision of the Court of Appeals of Kentucky did not announce a new doctrine. If there was a "segregation," it resulted from the decision of the Tennessee court in fixing the domicile of the decedent in that State in a suit wherein the distributees were not served with process. The effect of the argument of opposing counsel is that a rule of law should give way to expediency; that, as it is impracticable to bring non-residents before the court, the judgment of the Tennessee court should be upheld, not because it is right, but on account of the "confusion" which will ensue if another court shall consider the question therein decided. As remarked by this court in a celebrated case, rules of law may not be set aside "by the summary logic of ifs and syllogisms."

The purpose of a judicial inquiry is to truthfully decide a controverted fact, and the inability to induce all interested persons to submit to the jurisdiction of the particular court considering the disputed matter and to abide the decision, right or wrong, is no reason for the abrogation of a long-established rule of law. No amount of tergiversation or elusive sophistry can obscure the position assumed by opposing counsel—that the judgment of the Tennessee court should be given effect in Kentucky, although the persons to be affected here did not appear there, nor were they served with process, nor was the property within the jurisdiction of that court. What the Kentucky courts will do with the property of the decedent in this State is a matter for its determination; neither comity or law requires it to work an injustice to its own citizens or to deprive them of property to which under our law they are entitled. The matter is one of judicial discretion of the court.

(*Malcomson vs. Sherrill & Burton*, L. R. A., New Series, 1915-a, page 431.)

It is a "mere question of expediency" (*Sanford vs. Thompson*, 18 Ga., 554).

There is no universal rule on the subject. The court will decree a distribution among resident heirs or remit to a foreign administrator, as the case may be. If by remitting to a foreign administrator an injustice will be done to local distributees, the rule is to distribute in the State having custody of the property. If under all the facts of the case the foreign administrator can best distribute, custody of the property will be awarded to him. This is true, even though the principal administrator is recognized as having title to all of the personal property of the decedent.

III.

It is repeatedly asserted the plaintiff in error is the domiciliary administratrix, but that is the question for decision. The Kentucky court found the decedent to be domiciled in and a resident of this State. As a consequence of that finding, the defendant in error, Mrs. Augusta H. Baker, becomes the domiciliary administratrix. The question of domicil being one of fact; and the Kentucky court having determined the fact, the matter is concluded here. The Tennessee court likewise considered the question of domicil and reached a conclusion thereon, but the Kentucky distributees did not appear in the Tennessee action, nor were they served with process. The Tennessee court undoubtedly had the right to consider the question and to adjudicate thereon; so had the Kentucky court. So the question recurs, not upon the *correctness* of the decision of the *question of domicil*, but the force and effect to be given here to the Tennessee judgment deciding the question. It is within the rule announced in *Pennoyer vs. Neff*, 95 U. S., page 714; *National Exchange Bank vs. Wiley*, 195 U. S., page 257; *D'cary vs. Ketchem*, 11 Howard, 165, by this court, and *Williams vs. Preston*, 3 J. J. Marshall, 600; *Fletcher vs. Terrell*, 9 Dana, 337; *Cobb vs. Haynes*, 8 B. Monroe, 139; *Biensenthall vs. Williams*, 1 Duval, 332, by the Court of Appeals of Kentucky.

Title to or right of possession of property is not a jurisdictional fact. The argument that the Tennessee court having decided the plaintiff in error is the domiciliary administratrix, and consequently the title-holder of the personal property of the decedent, leads opposing counsel into a quagmire. We shall presently see the Kentucky court decided the defendant in error, Mrs. Augusta H. Baker, is the domiciliary administratrix before the Tennessee court considered the matter. The title of the domiciliary administratrix is one of trust for administration only. The distributees, even before the appointment of an administrator, may invoke the aid of a court to prevent waste, destruction, or damage to the personal property (Ruling Case Law, vol. 11, page 61).

"The title is not in his own right, but as a trustee for the benefit of those having claims against the estate and the distributees."

18 Cyc., page 205.

Blackman vs. Bachelor, 2 Iowa, 118.

In the case of *Carroll vs. U. S.*, 13 Wallace, page 151, the question was incidentally considered, and this court said:

"True, the ownership was not absolute, nor was her right to the proceeds absolute. She could claim only in a representative capacity; first in right of the intestate; and secondly, as trustee for creditors and distributees."

Opposing counsel is driven to emphasize the rule of law investing the domiciliary administratrix with title to personal property; for the reason that it is sought to be shown the Kentucky distributees had no interest in the personal estate of the decedent wherever situated, and therefore are not necessary parties to the Tennessee suit.

IV.

With the view of showing the personal estate of the decedent was in the State of Tennessee, it is repeatedly stated in the brief of opposing counsel that the certificates of stock held by him in the Kentucky corporation were in the possession of the plaintiff in error and were exhibited by her to the court in Tennessee. The circumstances under which she acquired possession of these certificates appear in the pleadings. The opinion of the Court of Appeals of Kentucky treating the matter is immaterial, and does not set forth the manner in which they were acquired. It recognized the situs of the property represented by said certificates to be in Kentucky in any event.

“For the purposes of administration, the situs of a certificate of stock of a corporation owned by a decedent is in the State where the corporation was organized and has its principal place of business, since it is the situs of the corporation and not the domicile of the holder of the certificate that determines.”

(Ruling Case Law, vol. 11, page 539.)

In *Grayson vs. Robertson*, 25 Southern Reporter, page 229, the Supreme Court of Alabama says:

“It is the situs of the corporation, not the domicile of the holder of the certificate that determines.”

And in the list of authorities supporting the text the case of *Young vs. Iron Company*, 85 Tenn., 189, is referred to. The Alabama court says:

“Such was the ruling of the Supreme Court of Tennessee in a case involving the attachment of shares of stock in a foreign corporation.”

The Kentucky court found the fact to be that substantially

all of the personal property of the decedent was in Kentucky; it treated the certificates of stock, carried by the plaintiff in error from the State after the death of the decedent, as of no moment, since the situs of the property was here.

V.

Decision of the Kentucky Court Was Right.

The defendant in error, Mrs. Augusta H. Baker, administratrix of Charles Baker, was appointed by the County Court of McCracken County on the 27th day of November, 1912, and on the 3d day of December, 1912, as such administratrix, she commenced an action in the circuit court in Kentucky to distribute the estate of the decedent and to fix his place of domicile. Substantially all of the personal property was in Kentucky, and the filing of the action in the circuit court placed the property *in custodia legis*. For all purposes, administration, distribution, payment of creditors, the Kentucky court had in its custody the personal property of the decedent. Incident to the distribution and settlement of the estate it had the undoubted right to, indeed was required to, determine the domicile of the decedent and ascertain the distributees. This suit progressed to judgment on the 13th day of February, 1913, wherein it was adjudged and determined the decedent was domiciled in and a resident of Kentucky, and distribution of the personal estate should be made according to the law of Kentucky. While this action was pending in Kentucky, and on the 28th day of December, 1912, the plaintiff in error, individually and as administratrix of the decedent, commenced her action in the chancery court of Tennessee, and on the 2d day of May, 1913, that cause progressed to judgment in the Tennessee court. It was therein adjudged that decedent was a citizen of and domiciled in Tennessee at the time of his death. Armed with the Tennessee judgment, the plaintiff in error

came to Kentucky and invoked the aid of the court to carry into effect the Tennessee judgment. The defendant in error, Mrs. Augusta T. Baker, administratrix of the decedent, came into that suit and exhibited the Kentucky judgment, thus bringing before the Kentucky court all of the distributees of the decedent. At the instance of the plaintiff in error the Kentucky court reopened its former judgment and again examined the question of domicile, and in doing so sought and obtained exhaustive proof upon the controverted fact, and with the record in this condition reached once more the same conclusion. The Kentucky court had custody of the property, and it appears of record all interested distributees were before that court. Having custody of the property and of the persons interested, why should it forego the right to determine, at the instance of its own citizens, the disputed fact? It is a familiar rule of law that a court, having acquired jurisdiction of a person or subject-matter, will hear and determine all questions involved in the action. The policy of the law is to compose misunderstandings, and it would be strange indeed if comity or law required courts of Kentucky to deny a hearing to its own citizens upon so nice a distinction. If the plaintiff in error is the domiciliary administratrix, it became her duty to conserve the personal estate of the decedent, and, assuming that she fulfilled her duty, she must have known the greater portion of the personal estate was here; she must also have known the court of Kentucky had custody of the property and was proceeding to adjudicate therein. It is not combated that the plaintiff in error had actual notice of the pendency of the Kentucky suit, but it is said the proceedings, so far as she is concerned, are of no avail because she was not properly before the court by constructive service. We conceded it, but this does not help opposing counsel, for, whether the plaintiff in error was before the Kentucky court or not, the custody of the property was undoubtedly in such court; so when she came to Kentucky with

the Tennessee judgment the matter, so far as she is concerned, was undetermined.

The Kentucky court, having custody of the property of the decedent in an action commenced before any foreign judgment was obtained, is asked to surrender its jurisdiction and to forego a determination of the litigated matter because a foreign court had *first* determined the question, determined it in an action where the Kentucky distributees are not served with process and did not appear.

If the "confusion" complained of is to be avoided, the rule of law giving to the court first acquiring custody of the property or jurisdiction of the person the right to adjudge therein should be adhered to. The course of the Tennessee lawsuit was unusual from its inception. The original bill stated the defendant in error, Mrs. Augusta H. Baker, mother of the decedent, claimed an interest in the estate of the decedent, yet when that judgment is brought to Kentucky she is not even made a party to the litigation. She had possession of the property; she was the administratrix, rightfully appointed by the Kentucky courts, and claiming a portion of the estate as her own. These facts were known to the plaintiff in error, as appears from the record; nevertheless the Kentucky court is asked to divest her of title to property in an action to which she is not a party. The proceedings manifest an effort to avoid the real question. The issue sought to be framed was in truth a false one. The adroit effort to deprive the defendant in error of her distributive share was frustrated, for she came into the action and subjected herself and the property held by her as administratrix to the jurisdiction of the Kentucky court. There is nothing novel here; each administratrix claims to be the domiciliary one; the matter is submitted to the Kentucky court in an action to which each administratrix is a party. The right to determine the question presented is not combated, but it is said a foreign court has considered the matter, even though one of the claimants was

not served with process. Bearing in mind that it is agreed a judgment *in personam* without service of process is void, that a judgment *in rem* as to property beyond the jurisdiction of the court is ineffective, we need not seek far for an answer to the argument.

We submit that the judgment of the Kentucky Court of Appeals was right.

Respectfully submitted,

CHARLES K. WHEELER,
Attorney for Defendants in Error.

D. H. HUGHES,
JAMES G. WHEELER,
Of Counsel.

(32170)

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No. [REDACTED] 115

JOSIE C. BAKER, INDIVIDUALLY AND AS ADMINISTRATRIX OF CHARLES BAKER, DECEASED,
PLAINTIFF IN ERROR,

vs.

BAKER, ECCLES & CO. AND AUGUSTA H. BAKER, INDIVIDUALLY AND AS ADMINISTRATRIX OF CHARLES BAKER, DECEASED, DEFENDANTS IN ERROR.

REPLY BRIEF OF DEFENDANTS IN ERROR.

CHARLES K. WHEELER,
Of Paducah, Kentucky,
Attorney of Record for Defendants in Error.

DANIEL HENRY HUGHES,
JAMES GUTHRIE WHEELER,
Of Counsel.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 439.

JOSIE C. BAKER, INDIVIDUALLY AND AS ADMINISTRATRIX OF CHARLES BAKER, DECEASED,
PLAINTIFF IN ERROR,

vs.

BAKER, ECCLES & CO. AND AUGUSTA H. BAKER, INDIVIDUALLY AND AS ADMINISTRATRIX OF CHARLES BAKER, DECEASED, DEFENDANTS IN ERROR.

REPLY BRIEF.

Counsel for plaintiff in error says:

“The material facts now for consideration are not those tending to establish *where the domicile was*, but are those only which relate to the competency of the forum undertaking to decide that question, and these are not in controversy.”

And again:

“Assuming the death of an intestate owning personal property in several States and a lawful administrator in a State where the intestate died and some of the next of kin reside * * * can a court * * * in such State, having general jurisdiction * * * in a suit brought by the lawful personal representative finally adjudge and determine the place of domicile of the intestate at the time of death so as to include next of kin residing in other States and made parties by publication?”

A circuit court in Kentucky determined “where the domicile was” in a suit brought by the lawful administrator in a State where “the next of kin reside” and where a substantial part of the personal property of the intestate is situated, and the judgment of the Kentucky court determining “where the domicile was” was rendered before the Tennessee court adjudged or determined that question. The Court of Appeals of Kentucky affirmed the judgment of the circuit court determining “where the domicile was,” and that is the ruling complained of. The argument is that the Court of Appeals of Kentucky should have ignored a judgment of a circuit court of that State and have adopted the conclusion of the Tennessee chancery court finding “where the domicile was,” notwith-

standing the prior decision of the Kentucky circuit court.

The appellate court says:

“For the reasons stated we think the judgment dismissing the petition of Mrs. Josie C. Baker should be affirmed, as the effect of the order of dismissal was to adjudge that Charles Baker died a resident of Kentucky, and therefore his mother was entitled to one-half of his surplus personal estate in this State and his widow to the other one-half.

“It is true the judgment appealed from did not so decree, but it is evident that the circuit court merely dismissed the petition instead of entering such a judgment, because it was of the opinion that the judgment rendered in the suit of Mrs. Augusta Baker, as administratrix, against Mrs. Josie Baker sufficiently determined the rights of the parties and it was unnecessary to again adjudge the matter.”

And the opinion further directs what judgment shall be entered upon a return of the case to the circuit court.

It was suggested below that Mrs. Josie Baker was not served with process nor brought before the court by proper warning order, and therefore the judgment rendered in the case of Mrs. Augusta H.

Bakre, administratrix, *vs.* Baker, Eccles & Co. and Mrs. Josie C. Baker and others was not only void as to her, but was a nullity for any purpose. The Court of Appeals held it void as to the plaintiff in error for the reason stated, but disallowed the residue of the contention. As to all parties defendant served with process the judgment in that case is effective and binding. The plaintiff in error not being bound by the judgment had the legal right to, and she did have the question of where the domicile was reconsidered in this action commenced by her in the Kentucky courts.

It is argued that if a man died leaving personal property and distributees in several States, and a lawful administrator is appointed in one of them, that in an action by such administrator, if the resident distributees are served with a process and the non-residents are properly before the court by warning order, a court of general jurisdiction can adjudge "where the domicile was" so as to include every one everywhere.

Let us carry the assumption further and assume that after judgment in such a suit "the lawful administrator" goes into another State and finds a suit by "the lawful administrator" against the distributees named in the first suit, and other local distributees, not parties to the first suit, but who are served with process in the latter action, and in which latter action a court of general jurisdiction in such State had determined the domicile to be in such last-named State. Now, according to plaintiff

in error the distributees served with process, or properly warned in the first suit, are bound by the judgment therein. They are likewise bound by the judgment in the second suit, as are also the local distributees served with process in said second suit. Now under the law of the first State the father and mother are the only distributees of an intestate, while the children only are distributees under the laws of the latter State. Which judgment will prevail and how will the intestate's property be distributed?

"The confusion" feared by opposing counsel will be worse confounded if his idea is to prevail. As the law is written a man is not bound by the judgment of a court unless served with personal process, nor is his property affected by such a judgment unless it be within the jurisdiction of the court pronouncing judgment. These are elementary and fundamental principles, not to be obscured by bewildering "assumptions" or artful sophistry. The very essence of our jurisprudence is a circumscribed judicial orbit and a right to be heard. Abandon these legal buttresses and we are confronted by arbitrary power which by right belongs to no tribunal.

"No court can acquire jurisdiction, either of person or property, simply by holding that it has jurisdiction."

Calhoun vs. Bryan, 133 N. W., 266.

It is admitted there is no precedent for the rule sought to be established, but it is contended that the complexities of an advancing society demand that you "dim" State lines, ignoring all the while that it is law and not lines sought to be dimmed. "Such (this) a proceeding is not one *in rem*." "Neither is it an action *in persona* against the distributees." Nevertheless, if this "proceeding" is to operate against defendant in error at all it must be by estoppel—estoppel by judgment, and if there be no judgment there is no estoppel.

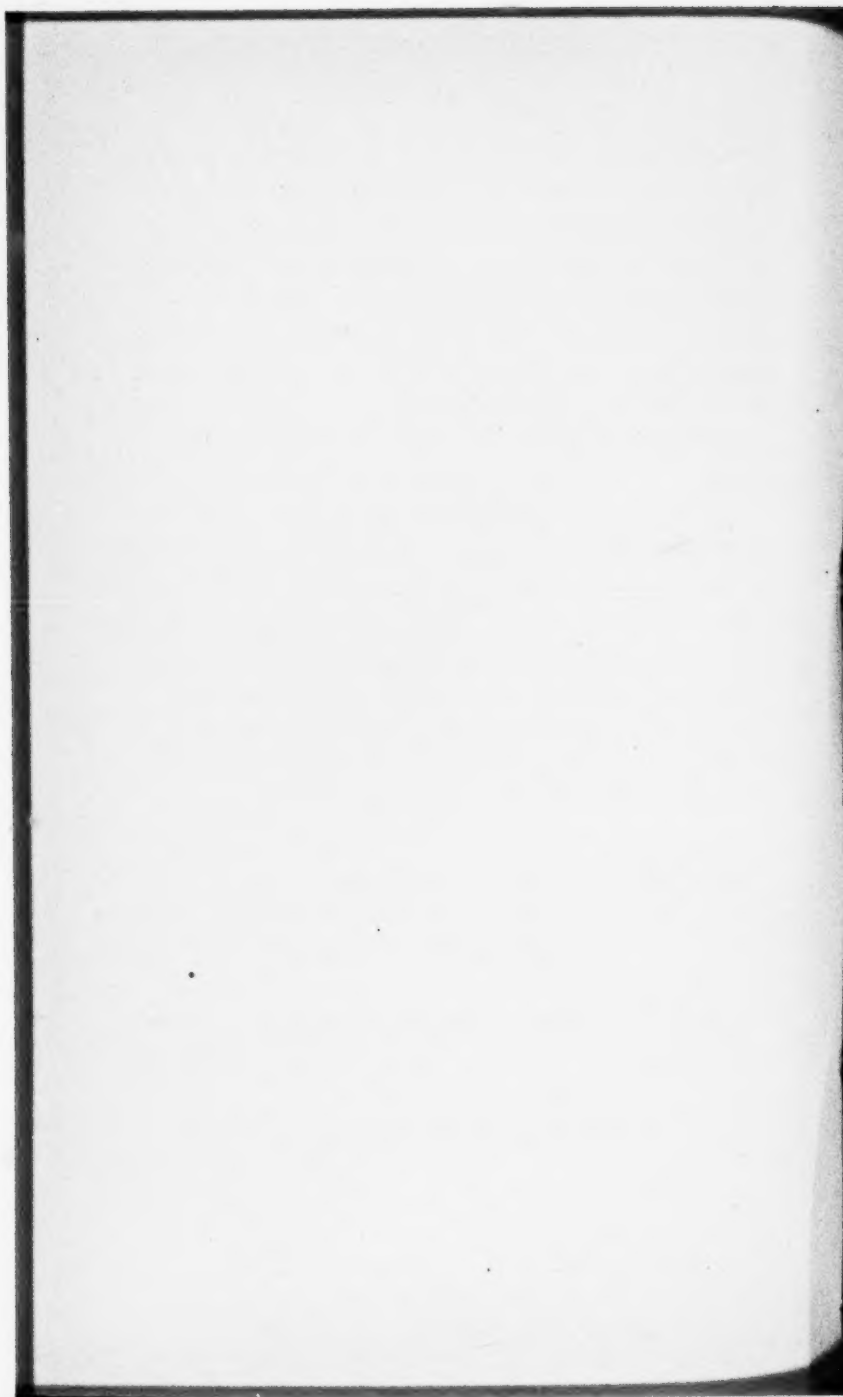
"The judgment of the court upon the facts determined the domicile, and that once determined the law decrees the consequence upon the property." However, before the facts of domicile can be determined the fact of jurisdiction must exist, for, if wanting, any "determination" is *coram non judice*.

There is no bill of evidence in the record, and I assume this court will accept the conclusion of facts found by the court of appeals of Kentucky, so perhaps it is not necessary to combat the statement of counsel in relation to the facts.

For the reasons stated herein and in the original brief, I respectfully submit that the motion should prevail.

CHAS. K. WHEELER,
Attorney of Record for Defendants in Error.

D. H. HUGHES,
J. G. WHEELER,
Of Counsel.



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IN THE
SUPREME COURT OF THE
UNITED STATES.
OCTOBER TERM, 1914.

No. ~~936~~ 115

JOSIE C. BAKER, INDIVIDUALLY AND AS AD-
MINISTRATRIX OF CHARLES BAKER, DECEASED,
PLAINTIFF IN ERROR.

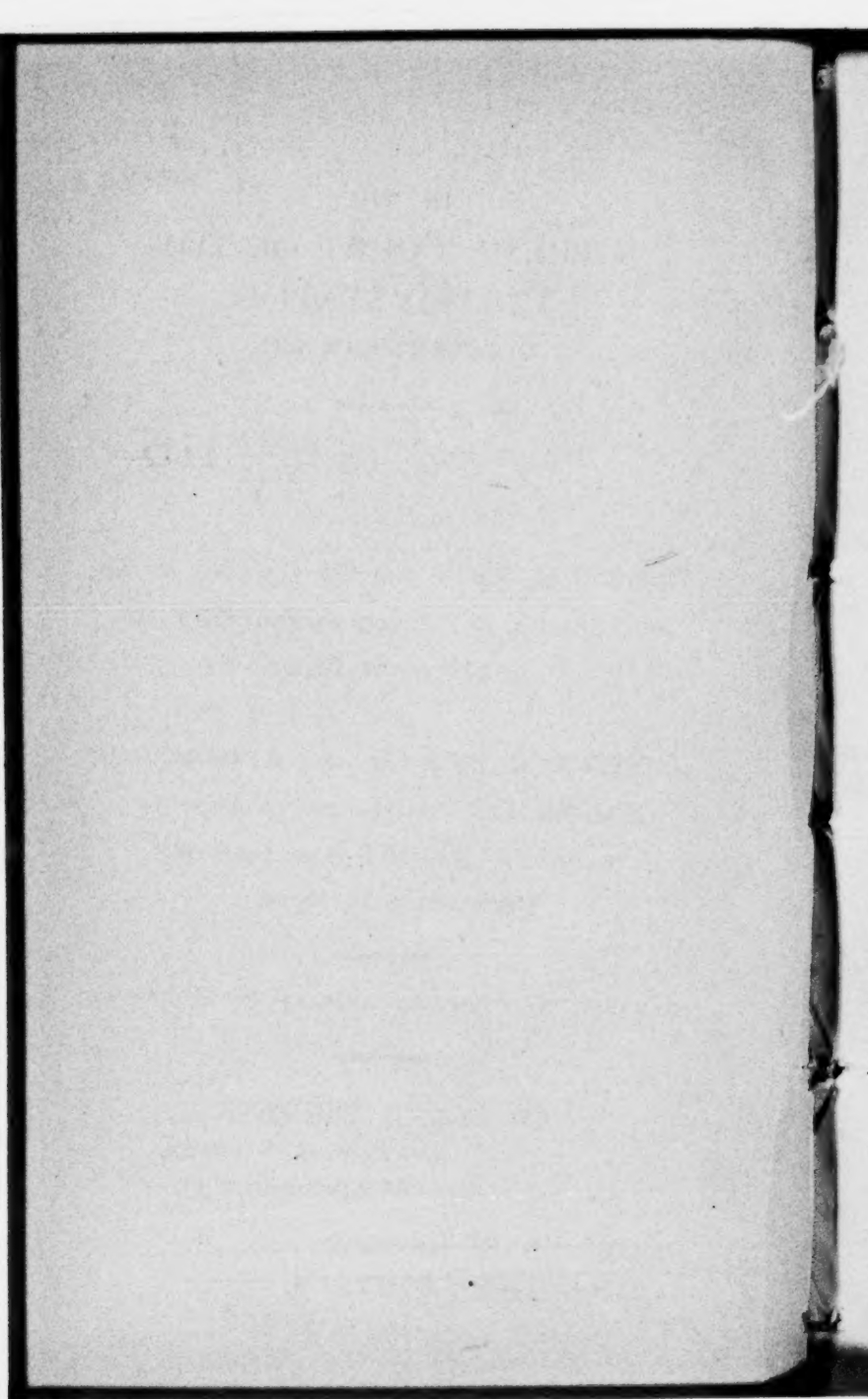
vs.

BAKER ECCLES & CO., AND AUGUSTA H.
BAKER, INDIVIDUALLY AND AS ADMINIS-
TRATRIX OF CHARLES BAKER, DECEASED,
DEFENDANTS IN ERROR.

IN ERROR TO COURT OF APPEALS OF KENTUCKY.

CHARLES K. WHEELER,
Of Paducah, Kentucky,
Attorney of Record for Defendants in Error.

DANIEL HENRY HUGHES,
JAMES GUTHRIE WHEELER,
OF COUNSEL.



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Williams vs Preston, 3 J. J. Marshall, 600.
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Cobb vs Haynes, 8 B. Monroe, 137.
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JOSIE C. BAKER, INDIVIDUALLY AND AS AD-
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BAKER, INDIVIDUALLY AND AS ADMINIS-
TRATRIX OF CHARLES BAKER, DECEASED,
DEFENDANTS IN ERROR.

IN ERROR TO COURT OF APPEALS OF KENTUCKY.

MOTION TO DISMISS WRIT OF ERROR OR TO
AFFIRM JUDGMENT OR TO TRANSFER TO
THE SUMMARY DOCKET.

Now comes the defendants in error, Baker, Ec-
cles & Company, and Mrs. Augusta H. Baker, indiv-
idually, and as administratrix of Charles Baker, de-
ceased, by their attorney of record herein, and move
this honorable court:

First: To dismiss the writ of error herein on the ground that this court has not jurisdiction thereof, no Federal question being involved therein.

Second: To affirm the judgment of the Court of Appeals of Kentucky on the ground that it is manifest that this writ of error was taken for delay, only, and that the questions upon which the decision in this cause depend are so frivolous as to need little or no argument, having been repeatedly decided by this court contrary to the contentions of the plaintiff in error.

Third: To transfer this cause for hearing to the summary docket, if this court should decline to dismiss or affirm, because the case is of such a character as not to justify extended argument.

CHARLES K. WHEELER,

Of Paducah, Kentucky,

Attorney of Record for Defendants in Error.

NOTICE OF MOTION.

The plaintiff in error is hereby notified that the defendants in error will, on the 11th day of October, 1915, on the convening of the Supreme Court of the United States on that day, or as soon thereafter as a hearing may be had, submit for the consideration of said court the foregoing motions, and each of them, and the brief in support thereof, hereto attached, including the opinion of the Court of Appeals of Kentucky and assignments of error filed by you in this cause, all of which is now served upon you herewith.

CHARLES K. WHEELER,

Of Paducah, Kentucky,
Attorney of Record for Defendants in Error.

Copy of the foregoing motion and notice, together with statement of facts, points and authorities, argument and appendix, received this 5th day of August, 1915.

C. C. GRASSHAM,
Of Paducah, Ky.

JOHN A. PITTS,
Of Nashville, Tenn.

E. W. ROSS,
Of Savannah, Tenn.
Attorneys of Record for Plaintiff in Error.

II.

PLEADINGS.

On the 28th day of December, 1912, Josie C. Baker, individually and as administratrix of Charles Baker, deceased, filed an original bill of complaint in the Hardin County, Tennessee Chancery Court against E. W. Baker and Mrs. Augusta H. Baker, of Paducah, Kentucky; J. W. Tackett, Jesse Barnes, Fayette Barnes, and G. L. Barnes, administrator of C. R. Barnes, residents of Hardin County, Tennessee; and the First National Bank of Savannah, Tennessee, wherein she sought to have dower assigned to her as the widow of Charles Baker in lands owned by her husband in Tennessee; to have declared invalid the life estate of Mrs. Augusta H. Baker in a portion of said land, to collect debts due her husband, and to have her rights in the personal estate of her husband fixed and determined. The defendants, E. W. Baker and Mrs. Augusta H. Baker were not served with personal process, nor did they enter their appearance to the action, either in person or by attorney. They were, however, brought before the Court by constructive service or warning order, in accordance with the laws of the State of Tennessee. The case progressed to judgment and the Tennessee Court determined that the domicile of Charles Baker, at the time of his death, was in Hardin County, Tennessee; that his widow, the plaintiff in error, was, under the laws of the State of Tennessee, entitled to all of his personal estate in Tennessee and also all of the personal estate of said decedent in the State of Kentucky.

On the 25th day of November, 1912, the County Court of Hardin County, Tennessee, appointed the plaintiff in error administratrix of the estate of Charles Baker, deceased, and in the order appointing her administratrix, adjudged and determined

that said decedent was a resident of Hardin County, Tennessee, and thereupon she executed bond and proceeded to administer the estate of her decedent. The action of the Chancery Court, referred to, was based upon the appointment of the plaintiff in error as administratrix of Charles Baker, deceased, insofar as it sought to determine the devolution of his personal estate, and to fix the rights of the plaintiff in error therein.

On the 1st day of September, 1914, plaintiff in error commenced her action in the McCracken Circuit Court against the defendants in error, Baker, Eccles & Company. She alleged that she was a citizen of the State of Tennessee; that her husband, Charles Baker, died September 1, 1912, intestate, in that state, owning real and personal property therein; that she had been appointed administratrix of his estate by the County Court of Hardin County, Tennessee, and had qualified and acted as such; that he left no children; that she, as his surviving widow, was his sole distributee, and entitled to all his personal estate. She then by averment set forth the action brought by her in the Chancery Court of Hardin County, Tennessee, and the judgment of said court in said action, and exhibited with her petition, an exemplified copy of the proceedings had in the Hardin County Court, and the proceedings had in the Chancery Court of Hardin County, Tennessee. The defendants in error, Baker, Eccles & Company answered the notice of said suit and denied that Charles Baker died a resident of, or domiciled in the State of Tennessee, and averred that he was at the time of his death a resident of and domiciled in the State of Kentucky, and likewise denied jurisdiction of the County Court of Hardin County, Tennessee, to appoint the plaintiff in error administratrix of said decedent's estate, or that his estate rightfully or could be distributed or settled in accordance with the laws of the State of Tennessee, and averred

that the certificate for 270 shares of the stock owned by Charles Baker at the time of his death in the corporation of Baker, Eccles & Company, was at such time in the State of Kentucky, but that after his death it was wrongfully taken possession of by the plaintiff in error, and by her carried to the State of Tennessee. It likewise averred that at the time of the filing of said action, the said Charles Baker owned no stock in such corporation, because by judgment of the McCracken Circuit Court, it had been required to, and had cancelled, all certificates of stock owned by Charles Baker at the time of his death and re-issued one-half to plaintiff in error, and the other half to Mrs. Augusta H. Baker, the mother of said decedent. It denied that the County Court of Hardin County had full or any jurisdiction of the personal estate of said decedent, and it denied that the Chancery Court of Hardin County had either jurisdiction of the subject matter or of the person of said defendant in error, Baker, Eccles & Company.

The Defendant in error, Mrs. Augusta H. Baker, filed her petition in this action, asking to be made a party thereto, and averred that she was the mother of the decedent, Charles Baker; that he resided in, and was a resident of McCracken County, Kentucky for twelve years prior to his death; that he died intestate, leaving no children; that under the laws of this State, his personal estate descended, one-half to her and the other half to his widow, the plaintiff in error; that plaintiff in error resided with her husband in Paducah, Kentucky, and left said State after the death of her husband; that after three months had passed, plaintiff in error, who was first entitled to administer the estate of said decedent, having failed or refused to ask for such administration, she applied for, and was granted letters of administration upon said decedent's estate; that upon her appointment, she caused said estate to be ap-

praised, and thereafter, filed her suit in the McCracken Circuit Court to settle said estate, in which action she made the plaintiff in error a party defendant, and likewise the defendants in error, Baker, Eccles & Company parties defendant thereto; that said action progressed to judgment and it was determined and decreed by the McCracken Circuit Court that the stock owned by Charles Baker, in Baker, Eccles & Company at the time of his death, rightfully belonged, one-half to the plaintiff in error, and the other half to her, as did the other personal property of said decedent, consisting of several thousand dollars in money; that Baker, Eccles & Company were directed by said judgment to cancel all certificates of stock held by said decedent, and re-issue the same in accordance with the decree of the court. In a separate paragraph, she controverts the allegation contained in the petition of the plaintiff in error, as to the residence of said decedent, and denied that the County Court of Hardin County, Tennessee had jurisdiction or authority to decree or adjudge the plaintiff in error, as the surviving widow of the decedent, was entitled in her own rights to all or any of the personal estate of the decedent, or to adjudge or determine that she could receive or hold as her individual property, all or any of said surplus personally, or that it had jurisdiction or authority to direct her to transfer any of his personal property, or that she was entitled under such judgment to sell any of said decedent's personal property; she denied that the Chancery Court of Hardin County, Tennessee, had jurisdiction over her person or of the subject matter of the action, and averred that said court had no jurisdiction or power to determine that Charles Baker, was at the time of his death a citizen of the State of Tennessee, or domiciled therein, and that its judgment and decree in so determining was void and of no effect; that it had no jurisdiction to determine that the plaintiff in error was the

sole distributee, or entitled to all of the personal estate of said decedent, and she exhibited with her answer, copies of the orders of the McCracken County Court appointing her administratrix of the estate of Charles Baker, and likewise an exemplified copy of the judgment of the McCracken Circuit Court, determining and fixing the rights of the defendant in error to administer the surplus personalty of said decedent.

Afterwards, on the 26th day of September, she filed an amended petition to be made a party, setting forth with particularity that she did not enter her appearance in the suit of the plaintiff in error in the Chancery Court of Hardin County, Tennessee; that she did not appear either by attorney or in person, or by any written pleading; she averred that the judgment of said court, and all of its proceedings, so far as she was concerned, were null and void; that she was not present at the time the plaintiff in error was appointed administratrix of the estate of said decedent by the County Court of Hardin County, Tennessee; that she was not served with summons, or notice, advising her that letters of administration would be, or had been granted to plaintiff in error upon the estate of such decedent; that she did not know thereof until after such appointment was made.

On the 25th day of October, 1913, plaintiff in error filed an amended petition in the McCracken Circuit Court, setting forth certain statutes of the State of Tennessee, relating to the descent and distribution of personal property, the probating of wills and the granting of letters testamentary, and the devolution of personal property as fixed by the laws of that State, and also filed as an exhibit with said amended petition, the local rules of practice in the Chancery Courts of Tennessee.

On the 27th day of October, plaintiff in error filed a second amended petition, in which she asked

that Mrs. Augusta H. Baker, individually, be made a party defendant to the action, and averred that she had no right or interest in any of the property or the proceeds thereof, involved in the action; that it all belonged to the plaintiff, as set forth in her original petition; that Mrs. Augusta H. Baker was claiming a right to, or interest in the property and its proceeds, and for that reason, should be a party defendant; that Mrs. Augusta H. Baker was a party defendant; duly and regularly summoned in the action brought by the plaintiff in error in the Chancery Court of Hardin County, Tennessee; that said court was one of general and superior jurisdiction; that the rights of property were involved in said action, as between plaintiff in error and Mrs. Augusta H. Baker, and that she was concluded by the judgment of said court, determining and adjudging that said plaintiff in error was entitled to all of said property.

A reply was filed to the answer of Baker, Eccles & Company, controverting the affirmative allegations thereof, and in the third paragraph, alleging that plaintiff in error was never a party to the action in the McCracken Circuit Court brought by Mrs. Augusta H. Baker, administratrix of Charles Baker, deceased; that no warning order was made against her; that she was not before the court by service of summons, and the judgment as to her was void.

An answer was filed by plaintiff in error to the intervening petition of Mrs. Augusta H. Baker, administratrix of Charles Baker, deceased, and the affirmative allegations of said petition controverted, and in a separate paragraph, she averred that she was not a party to the action in the McCracken Circuit Court brought by Mrs. Augusta H. Baker, administratrix of Charles Baker, deceased; that no affidavit or warning order was made to bring her before said court by publication, and that the judg-

ment was void, so far as she was concerned, and a copy of the judgment and the proceedings of the McCracken Circuit Court were attached to such answer.

The defendant in error, Mrs. Augusta H. Baker, by reply, controverted the affirmative allegations of the answer to her intervening petition.

The defendant in error, Baker, Eccles & Company, likewise by rejoinder, controverted the affirmative allegations of the reply to its answer.

There was an agreement between counsel that the affirmative allegations contained in the reply of Mrs. Augusta H. Baker, administratrix, and those of the answer filed to the second amended petition of the plaintiff in error, and of the rejoinder of Baker, Eccles & Company, and of the answer of Mrs. Augusta H. Baker, individually, adopting as her own, her answer filed as administratrix, should be considered controverted of record. There were a number of motions to strike, also demurreurs, which are not noted, because immaterial to the consideration of the question presented.

For the convenience of the court, we append to the petition, the assignment of errors and the opinion of the Court of Appeals of Kentucky.

III.

FACTS.

Charles Baker died on September 1, 1912 a citizen of and domiciled in Kentucky; all of his personal estate was in Kentucky, except a small amount of money found in his pocket upon his death.

He, with his brother, E. W. Baker, owned a tract of land in Hardin County, Tennessee. He formerly lived in Tennessee, but twelve years prior to his death, moved to Paducah and engaged in the wholesale grocery business, and remained continuously an inhabitant of, and domiciled in the City of Paducah until his death.

IV.

POINTS AND AUTHORITIES.

(a) A judgment of a county court appointing an administrator is of no probative force upon the question of domicile in a contest in a court of a foreign state in the course of proceedings for the administration of assets within said foreign state.

Overby vs. Gordon, 177 U. S., 214

Thorman vs. Frame, 176, U. S., 350

Vaughn vs. Northup, 15 Peters, 1.

Story's Conflict of Laws, Page 850, sec. 514.

18 Cyc., 1221.

Freeman on Judgments, Vol. 1, page 186, sec. 120.

Fletcher's Admr. vs. Sanders & Weir, 7 Dana, p. 223,

Jacob's Admr. vs. L. & N. R. R. Co., 10 Bush, 263.

Miller vs. Swan and Brown, 91 Ky., 36.

Masters' Executors vs. Bienker &c., 87 Ky., 1.

(b) "A foreign judgment is impeachable for want of personal service within the jurisdiction of the defendant, this being internationally essential to jurisdiction in all cases in which the defendant is not a subject of the State entering judgment, and it is competent for a defendant in an action on a judgment of a sister State, as in an action on a foreign judgment, to set up as a defense want of jurisdiction, in that he was not an inhabitant of the State rendering the judgment and had not been served with

process, and did not enter his appearance."

Old Wayne Mutual Life Assn. vs. McDonough, 204, U. S., 8.

Grannis vs. Ordean, 234 U. S., 385.

Pennoyer vs. Neff, 95 U. S., 714.

Nat'l. Exchange Bank of Tiffin vs. Wiley, 195, U. S., 257.

Thompson vs. Whitman, 18 Wallace, 457.

D'Arcy vs. Ketchum, 11 Howard, 165.

Wharton's Conflict of Laws, secs. 32 and 654.

Story's Conflict of Laws, secs. 539-540.

Williams vs. Preston, 3 J. J. Marshall, 600.

Rogers vs. Coleman, 3 Ky., (Hardin) 413.

Cobb vs. Haynes, 8 B. Monroe, 137.

Harris vs. John, 6 J. J. Marshall, 257.

V.

ARGUMENT.

The decisive questions in this case have reference to the clause in the Constitution of the United States requiring that full faith and credit be given in each State to the public acts, records and judicial proceedings of other States.

The errors assigned are eight in number, and the complaint is of the judgment of the Court of Appeals of Kentucky, because such judgment held the County and Chancery Court of Hardin County, Tennessee had not jurisdiction to conclude defendants in error by the judgments in said courts. The third and fourth assignments of error accurately state the contention. They are:

THIRD:

"The record of the Judicial proceedings by plaintiff in error in the administration and distribution of the estate of Charles Baker, deceased, in the County Court of Hardin County, in the State of Tennessee, having been authenticated in accordance with the laws of the United States and produced and suit based thereon in the State of Kentucky, the said judgment of the Court of Appeals of the said State of Kentucky failed and refused to give to said judicial proceedings such faith and credit as they have by law and usage in the courts of the said State of Tennessee."

FOURTH:

"The record of the judicial proceedings by plaintiff in error against defendant in error, Augusta H. Baker in the Chancery Court of Hardin County, Tennessee, wherein the domicile of Charles Baker, deceased, at the date of his

death, was regularly and validly adjudged to have been in the State of Tennessee and the plaintiff in error to be his sole distributee, having been duly authenticated in accordance with the laws of the United States and produced and suit based thereon in the State of Kentucky, the said judgment of the Court of Appeals of the State of Kentucky failed and refused to give to said judicial proceedings and judgment of the Chancery Court of Hardin County, Tennessee, such faith and credit as they have by the law and usage in the courts of said State of Tennessee."

It would seem a sufficient answer to the first assignment of error to cite the decision of this court in the case of *Overby vs. Gordon*, 177 U. S., 214. You there considered the conclusiveness of a judgment appointing an administrator by the De Kalb County Court of the State of Georgia, when offered as proof of domicile in a contest between the heirs of the decedent before the Supreme Court of the District of Columbia, and you wrote:

"Now it is undeniable that the sovereignty of the State of Georgia and the jurisdiction of its courts at the time of the adjudication by the De Kalb County Court, by the grant of letters of administration on the estate of Haralson, did not extend to or embrace the assets of the decedent situated within the territorial jurisdiction of the District of Columbia, and, viewed as a step in a proceeding in rem relating to property within the jurisdiction of the court, the adjudication of a grant of letters would have no binding probative force in contests respecting property lying outside of the territorial dominion of the State of Georgia."

The defendants in error do not deny the right

of the County Court of Hardin County, Tennessee, to grant letters of administration upon the estate of Charles Baker, deceased, for it appears he died intestate, holding real and personal property in that County; but it is contended that the appointment of such administrator, though rightful, was effective only for the purpose of assembling assets belonging to the estate, and after the payment of debts, to hold the same for distribution among his rightful heirs; that such court had no power to adjudge the domicile of the decedent or the devolution of his personal property; that it was *ex parte* and effective for no purpose other than stated. The question of domicile might become important if the decedent was a resident of the State of Tennessee; its importance being only to establish the particular county court which was vested with jurisdiction to appoint such administrator.

“We are of the opinion that the De Kalb County Court possessed the power to determine the question of domicile of the decedent for the purpose of conclusively adjudicating the validity within the State of Georgia of a grant of letters of administration, but that it did not possess the power to conclusively bind all the world as to the fact of domicile, by a mere finding of such a fact in a proceeding *in rem*. In other words, proceedings which were substantially *ex parte* cannot be allowed to have greater efficacy than would a solemn contest *inter partes*, which would have estopped only actual parties to such contest as to facts which had been or might have been litigated in such contest.

Our conclusion being that the adjudication of the fact of domicile in Georgia made in the grant of letters by the De Kalb County Court, and which was not made in a contest *inter*

partes, was of no probative force upon the question of domicile in a contest in a court of the District of Columbia in the course of proceedings for the administration of assets within said District."

[*Idem*]

This would seem decisive of the question here, for the appointment was made without notice, upon application of the plaintiff in error. The defendants in error resided in the State of Kentucky, and had no notice, actual or constructive of either the application or the appointment.

It was argued below that a county court of Tennessee

"is a Court of superior and general jurisdiction in matters of administration, so that its orders and decrees are given the same force and effect and the same presumptions are indulged in their favor, in that field of its jurisdiction, as in the case of other courts of superior and general jurisdiction."

And we understand the third assignment of error to mean that the refusal of the Courts of Kentucky to hold the appointment of the plaintiff in error as administratrix of Charles Baker, deceased, by the County Court in Tennessee immune from collateral attacks in this State to be a denial of the constitutional guarantee of the first section of the fourth article of the Constitution.

In *Thorman vs. Frame*, 176 U. S., 350, the question for decision is stated as follows:

"The question before us is whether the Supreme Court deprived Mrs. Thorman of a right secured to her by the Constitution and laws of the United States in holding that her appointment as administratrix of the succession of Joseph Fabacher was not a conclusive adjudication that Fabacher's domicile was at the time of his death in the parish of Orleans, Louisiana."

Answering the question, you say:

"Whatever the effect of the appointment, it must be as a judgment and operate by way of estoppel. A judgment in rem binds only the property within the control of the courts which rendered it; and a judgment in personam binds only the parties to that judgment and those in privity with them. This appointment cannot be treated as a judgment in personam, and as a judgment in rem it merely determined the right to administer the property within the jurisdiction, whether considered as directly operating on the particular things seized, or the general status of assets there situated. . . .

In *DeMora vs. Concha*, 29 Ch., Div. 268, it was held that the decree of a probate court was not conclusive in rem as to domicile, although the fact was found therein, because it did not appear that the decree was necessarily based on that finding; and it was doubted whether the findings on which judgments in rem are based are in all cases conclusive against the world. The decision was affirmed in the House of Lords, 11 App., Case 541. The case is a leading and instructive one, was ably argued and has been repeatedly followed since the judgment was pronounced."

"Again, it is thoroughly settled that the constitutional provision that full faith and credit shall be given in each State to the judicial proceedings of other States, does not preclude inquiry into the jurisdiction of the court in which the judgment is rendered, over the subject matter, or the parties affected by it, or into the facts necessary to give such jurisdiction."

It was not an essential of the exercise of jurisdiction by the County Court of Hardin Count, Tennessee to adjudge the domicile of Charles Baker; the essentials of such Jurisdiction are, first, death,

and second, property of the decedent within the jurisdiction of the Court. Admittedly the jurisdictional essentials existed, but the Court, in the exercise thereof, was not required to, nor did it have the power to pass on the question of domicile.

Judge Story in the very early case of *Vaughn vs. Northup*, 15 Peters, Page 1, says:

"Every grant of administration is strictly confined in its authority and operations to the limits of the territory of the government granting it; and does not de juri extend to other matters. It cannot confer as a matter of right, any authority to collect assets of the decedent in any other State; and whatever operation allowed to it, beyond the original territory of the grant is a mere matter of comity which every nation is at liberty to yield or to withhold, according to its own policy and pleasure with reference to its own institutions and the interests of its own subjects."

In *Story's Conflict of Law*, page 850, section 514, it is stated:

"For it is exceedingly clear that the probate grant of letters testamentary, or of letters of administration, in one country, give authority to collect the assets of the testator or intestate only in that country, and do not extend to the collection of assets in foreign countries; for that would be to assume an extraterritorial jurisdiction or authority and to usurp the functions of the foreign local tribunals in those matters."

In 18 *Cyc.*, page 1221, it is stated to be

"A well settled principle of the common law that letters of administration have no extraterritorial force and confer no authority upon the representative to administer upon property outside of the State or country of his appointment."

Such being the law, the County Court of Tennessee clearly could not make an order or deliver a judgment that would bind the property situated in the State of Kentucky; its determination that Charles Baker died domiciled in that State did not, and could not, conclude his heirs living in Kentucky, nor could it affect any property of such heir in this State. The administratrix appointed by the Tennessee County Court could not sue or be sued in Kentucky Courts, nor could she assume dominion or control over her intestate's estate here, and if she had invoked the aid of the County Court of Tennessee for a sale of the property of her intestate here, the act would have been void.

"So if a probate court should make an order for the sale of property situate in another state than the one in which the order is made, this would also be an assumption of authority over a subject-matter not within the jurisdiction of the court, and would be void. This rule has been held to be applicable even where personal property, though in another state at the death of its owner, was subsequently brought within the state where the order was made." *Freeman on Judgments*, Vol. 1, page 186, sec. 120.

The decisions of the Court of Appeals of Kentucky are in accord with the doctrine stated above.

In VII *Dana*, page 223, *Fletcher's Admr. vs. Sanders and Weir*, it is said to be

"A well settled doctrine that letters of administration granted by one nation or state, can have no operation per se, within the jurisdiction of another nation or state; that, therefore, such authority, being local, can de jure, vest no right of suit in any other country than that in which it was granted."

And as a corollary of this rule, Kentucky Courts hold that though county courts, in matters of probate, are courts of general and exclusive juris-

diction, nevertheless the appointment of an administrator may be collaterally called in question where the proper averments are made. The leading case in this State on the subject is *Jacobs' Admr. vs. L. & N. R. R. Co.*, 10 *Bush*, page 263, wherein it is said:

"The proceedings of the County Court in matters of probate and administration are not conclusive as to the jurisdiction of the Court, and such jurisdiction may be collaterally called in question where the proper averments are made; but in such cases the onus is upon the party raising the issue to show that want of jurisdiction."

In the later case of *Miller vs. Swan and Brown*, 91 *Ky.*, page 36, it is said:

"The domicile of the testatrix being a jurisdictional fact as to the probate, the jurisdiction of the County Court of Hardin to admit the paper to probate may be questioned in this collateral proceeding."

In *Masters' Executors vs. Bienker &c.*, 87 *Ky.*, page 1, the Court writes:

"The proceedings of a County Court in this State in matters of probate and administration are not conclusive as to the jurisdiction. It may be called in question by proper averments."

The Court of Appeals of Kentucky held so much of the judgment of the County Court in Tennessee as undertook to determine the residence of Charles Baker was in Hardin County at the time of his death, and that as a legal consequence thereof, his widow, under the laws of the State, was his sole distributee and entitled to the whole of his personal estate, void as to defendant in error, Mrs. Augusta H. Baker, his mother. It was this that called forth the third assignment of error, and we submit the judgment of the Kentucky Court was in accord with the decisions of this Court and with the common

law. The Kentucky judgment does not undertake to disturb any right secured to the plaintiff in error, under the laws of the State of Tennessee.

II.

Admittedly, the Chancery Court of Hardin County, Tennessee was a court of original and superior jurisdiction, and if it had jurisdiction of the parties and the subject matter, its judgment is entitled to the same faith and credit in the courts of other states they receive in the courts of Tennessee. The fourth assignment of error is that the Court of Appeals of Kentucky failed and refused to give to the judgment of the Chancery Court and the judicial proceedings therein, the faith and credit to which it was entitled. As a corollary of this proposition, the fifth assignment of error complains that the Kentucky Courts heard evidence to determine the place of domicile of Charles Baker, deceased, the Tennessee judgments having established that fact. The sixth assignment of error, likewise predicated upon the fourth assignment, complains that the Kentucky Courts held the judgment of the Chancery Court of Tennessee without jurisdiction to determine the devolution of personal property beyond its borders against persons constructively summoned, where such constructive summons was in conformity to the laws of Tennessee.

The final determination of a court is a judgment in personam or in rem, or both, so the investigation of the alleged errors requires the consideration, first of the scope and binding effect of judgments in personam and in rem; and second, the jurisdiction and power of the Court to pronounce such judgment. The defendants in error were not before the Chancery Court of Tennessee by summons or personal process, nor did either of

them appear by attorney. It may be noted that the defendant in error, Baker, Eccles & Company, were not parties, even in name to the action in the Tennessee Court by the plaintiff in error, nor was the defendant in error, Augusta H. Baker, administratrix of Charles Baker, deceased, as such, though she was made a party as an individual and before such Court by publication or constructive service. In these circumstances, was the judgment of the Chancery Court in Tennessee a judgment in personam against the defendant in error, Mrs. Augusta H. Baker? It will be admitted that it was not against her as administratrix, nor was it a judgment of any character against defendants, Baker, Eccles & Company. In *Old Wayne Mutual Life Association vs. McDonough*, 204 U. S., page 8, it is declared to be the "settled doctrine" of this Court, that,

"The Constitutional requirement that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State is necessarily to be interpreted in connection with other provisions of the Constitution and therefore no State can obtain in the tribunals of other jurisdictions full faith and credit for its judicial proceedings if they are wanting in the due process of law enjoined by the fundamental law. 'No judgment of the Court is due process of law if rendered without jurisdiction in the court, or without notice to the party.'"

"A judgment rendered by a State Court in an action in personam against a non-resident, served by publication of summons, but upon whom no personal service of process within the state was made and who did not appear to the action, was devoid of any validity either within or without the territory of the State in which the judgment was rendered."

Such is the language of this Court in *Grannis vs. Ordean*, 234 U. S., 385. Authority for the statement is based upon the case of *Pennoyer vs. Neff*, 95 U. S., 714. This Court wrote in the case of *National Exchange Bank of Tiffin vs. Wiley*, 195 U. S., 257 that,

"It is thoroughly settled that a personal judgment against one not before the court by actual service of process, or who did not appear in person or by an authorized attorney, would be invalid as not being in conformity with due process of law."

In the same case you consider the right of a court to look into the jurisdiction of a foreign court in a suit based upon a judgment rendered by such foreign court:

"If his appearance was entered and judgment confessed by one who had, in fact, at the time, no authority to do either; and consequently, that the court was without jurisdiction to proceed except on legal notice to him or without his appearance in person or by an attorney authorized to represent him. If law and usage in Ohio were to the contrary, then, such law and usage would be in conflict with the Constitution of the United States."

The decision was grounded upon the leading case of *Thompson vs. Whitman*, 18 Wallace, page 457. Speaking for the court, Mr. Justice Bradley in that case wrote:

"On the whole, we think it clear that the jurisdiction of the court by which a judgment is rendered in any State may be questioned in a collateral proceeding in another State, notwithstanding the provisions of the fourth article of the Constitution and the law of 1790, and notwithstanding the averments contained in the record of the judgment itself."

And quoting from *D'Arcy vs. Ketchum*, 11 Howard,

165 with approval, he says:

"Thus a judgment by the court of a State against a citizen of such State, in his absence, and without any notice, express or implied, would, it is presumed, be regarded in every external jurisdiction as absolutely void and unenforceable. Such would certainly be the case if such judgment was so rendered against the citizen of a foreign State."

The language of *Whartons Conflict of laws*, Sections 32 and 654 and *Story's Conflict of Laws*, Sections 539-540 that

"A foreign judgment is impeachable for want of personal service within the jurisdiction of the defendant, this being internationally essential to jurisdiction in all cases in which the defendant is not a subject of the State entering judgment, and it is competent for a defendant in an action on a judgment of a sister State, as in an action on a foreign judgment, to set up as a defense want of jurisdiction, in that he was not an inhabitant of the State rendering the judgment and had not been served with process, and did not enter his appearance."

was approved in *Gover and Baker Sewing Machine Company vs. Radcliffe*, 137 U. S., 287. Judge Story, in his *Conflict of Laws*, declared that to hold otherwise would be contrary to natural justice.

In *Pennoyer vs. Neff*, it is held that "substituted service by publication" is

"where the entire object of the action is to determine the personal rights and obligations of the defendants, that is where suit is merely in personam; is ineffectual for any purpose."

The law as stated prevails in this State:

Williams vs. Preston, 3 J. J. Marshall, 600; *Rogers vs. Coleman*, 3 Ky., (Hardin) 413; *Cobb vs. Haynes*, 8 B. Monroe, 137 and *Harris vs. John*,

6 *J. J. Marshall*, 257.

So it appears that the action of the Kentucky Court in inquiring into the jurisdiction of the Tennessee Court violated no right of the plaintiff in error; that the Tennessee judgment, attempting to fix the status of the property in Kentucky claimed by the defendants in error, who were not personally served with process was "coram no judice." If the judgment was not effectual in personam, it remains only to be seen if it was a judgment in rem.

"Jurisdiction is acquired in one of two modes: First, as against the person of the defendant by the service of process; or, secondly, by a procedure against the property of the defendant within the jurisdiction of the court. In the latter case, the defendant is not personally bound by the judgment beyond the property in question. And it is immaterial whether the proceeding against the property be by an attachment or bill in chancery. It must be substantially a proceeding in rem."

"*Pennoyer vs. Neff.*, 95 U. S., 714.

Broadly speaking, a proceeding in rem is "an action instituted against the thing," but the "thing" in controversy here was in Kentucky; the Tennessee action could not be called a proceeding in rem. We understand opposing counsel to admit that the Tennessee judgment was not binding in personam or in rem, but by a process of illusive reasoning, it is argued that the Tennessee action was neither the one thing nor the other, but concerned the estate of Charles Baker; that, as plaintiff in error was the domiciliary administratrix, she was entitled to the personalty of her decedent wherever situated, and that therefore, the Tennessee Court had jurisdiction of the property held by her as such domiciliary administratrix. The vice of the contention is that it assumes as a postulate, the litigated fact, for,

“where different administrations are granted in different jurisdictions, that which is granted in the jurisdiction of the decedent’s last domicile is termed the principal or domiciliary administration.”

18 Cyc., page 1222.

Fletcher’s Admr. vs. Sanders and Weir, VII Dana, 344, states that:

“Moveable property has no situs because it is deemed personal and therefore subject to the laws of the owner’s domicile in every respect (except for the purpose of administration), and therefore, should be distributed according to the law of his domicile.”

so that to determine the devolution of the personal property of Charles Baker, it was necessary to judicially determine his domicile. This, the Tennessee Courts was without power to do, because it had no jurisdiction of the person of the defendants in error.

Therefore, defendants in error respectfully submit that the writ of error is taken for delay only, and that the contentions upon which it is claimed the Federal question depends are apparently so frivolous as not to require further argument.

CHARLES K. WHEELER,

Of Paducah, Kentucky,

Attorney of Record for Defendants in Error.

DANIEL HENRY HUGHES,

JAMES GUTHRIE WHEELER,

Of Paducah, Kentucky,

OF COUNSEL.

VI.

APPENDIX.

(A) ASSIGNMENT OF ERRORS.

(B) OPINION OF COURT OF APPEALS OF KENTUCKY.

And now comes the said plaintiff in error and in connection with her petition for a writ of error herein, respectfully submits that in the record, proceedings, decision, and final judgment of the Court of Appeals of the State of Kentucky, in the above entitled matter, there is manifest error in this, to-wit:

First. The said judgment of the Court of Appeals of the State of Kentucky is repugnant to and in conflict with Article IV. section 1, of the Constitution of the United States, which declares that "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

Second. That said judgment of the Court of Appeals of the State of Kentucky is repugnant to and in conflict with the Act of Congress, section 905 U. S. Revised Statutes, which proscribes the manner in which the public Acts, records, and judicial proceedings of any State or Territory of the United States shall be authenticated, and declares that "the said records and judicial proceedings, so authenticated, shall have full faith and credit given them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

Third. The record of the judicial proceedings by plaintiff in error in the administration and dis-

tribution of the estate of Charles Baker, deceased, in the County Court of Hardin County, in the State of Tennessee, having been authenticated in accordance with the laws of the United States and produced and suit based thereon in the State of Kentucky, the said judgment of the Court of Appeals of the said State of Kentucky failed and refused to give to said judicial proceedings such faith and credit as they have by law and usage in the courts of the said State of Tennessee.

Fourth. The record of the judicial proceedings by plaintiff in error against defendant in error Augusta H. Baker in the Chancery Court of Hardin County, Tennessee, wherein the domicile of Charles Baker, deceased, at the time of his death, was regularly and validly adjudged to have been in the State of Tennessee and the plaintiff in error to be his sole distributee, having been duly authenticated in accordance with the laws of the United States and produced and suit based thereon in the State of Kentucky, the said judgment of the Court of Appeals of said State of Kentucky failed and refused to give to said judicial proceedings and judgment of the Chancery Court of Hardin County, Tennessee, such faith and credit as they have by the law and usage in the courts of said State of Tennessee.

Fifth. The said judgment of the Court of Appeals of the said State of Kentucky erroneously failed and refused to give to said judgments of the County Court, and of the Chancery Court of Hardin County, in the State of Tennessee, determining the place of domicile of Charles Baker, deceased, any faith and credit or any force and effect whatsoever, in the State of Kentucky; and erroneously heard and considered evidence on the question of such place of domicile, and on such evidence erroneously overturned and nullified the findings and judgments of said county and Chancery Courts of Tennessee on that issue of fact.

Sixth. The said judgment of the Court of Appeals of the State of Kentucky erroneously held and adjudged that the Chancery Court of Hardin County, Tennessee, conceded to be a Court of superior and general jurisdiction, in a confessedly regular and valid proceeding brought in accordance with the laws of that State by the lawful personal representative of the intestate decedent, Charles Baker, appointed there and charged with the duty of distribution of his personal estate a substantial part of which was located there, and against all persons interested and who were brought before such court either by personal or by constructive service as required by the laws of that state in such cases, could not decide and finally determine the issue of fact as to the place of the domicile of the intestate so as to bind and conclude a non-resident defendant brought before such court by constructive service and who did not personally appear and defend; and erroneously held and adjudged that such finding and judgment of the Chancery Court of the State or Tennessee might be collaterally attacked and disregarded by such non-resident, in the State of Kentucky.

Seventh. The said Court of Appeals of the State of Kentucky, having erred in the respects above indicated, erroneously affirmed the judgment of the McCracken Circuit Court in the State of Kentucky dismissing the suit of petitioner therein, because there are no other matters or grounds contained in the record which can warrant or sustain such dismissal and affirmance.

Eighth. The said Court of Appeals of the State of Kentucky, having held and treated the proceeding and judgment of the said Chancery Court of Hardin County, Tennessee, as regular and valid within the State of Tennessee, and as having conclusively established in that State that the domicile of Charles Baker was in the State of Tennessee so as to entitle plaintiff in error to all his personal

estate within the State of Tennessee, the said Court of Appeals of the State of Kentucky erred in failing and refusing to hold and adjudge that said judgment was effective to entitle plaintiff in error to the certificates for \$27,000 of stock in the corporation of Baker, Eccles & Company, which certificates were then and there present and in the custody and jurisdiction of said Tennessee Chancery Court.

C. C. GRASSHAM and
BERRY & GRASSHAM,
E. W. ROSS,
JNO. A. PITTS,
Attorneys for Plaintiff in Error.

Baker, et al. vs. Baker, Eccles & Company, et al.

(DECIDED FEBRUARY 11, 1915.)

APPEAL FROM MCCrackEN CIRCUIT COURT.

OPINION OF THE COURT BY JUDGE CARROLL.

—AFFIRMING.

This litigation, concerning the descent and distribution of the personal estate of Charles Baker, and which involves one important and disputed question of fact and several interesting questions of law, arose in this way; Charles Baker was born and lived for a number of years at or near the town of Savannah, in Hardin County, Tennessee. In 1901 he came to Paducah, Kentucky, and engaged in the mercantile business, in which business he remained at Paducah from that time until his death in 1912.

In September, 1912, while en route to his old home in Tennessee for a visit, he died while on board a steamboat in Humphrey County, Tennessee, leaving surviving as his only heirs-at-law, his widow, the appellant, Mrs. Josie C. Baker, his mother, the appellee, Mrs. Augusta H. Baker, and a brother, E. W. Baker. At the time of his death he owned real property situated in Hardin County, Tennessee, also some personal estate located in that County, as well as valuable personal estate having a situs in Paducah, Kentucky, consisting of shares of stock in the Paducah Corporation of Baker, Eccles & Company, and a large debt against this corporation.

In November, 1912, his widow applied to the County Court of Hardin County, Tennessee, for letters of administration on the estate of her husband. The proceedings in this court, which were en-

tirely *ex parte*, were had on the motion of the widow. The request was granted and the order of the Hardin County Court appointing her administratrix recites that "at the time of his death the residence of the said Charles Baker was in Hardin County, Tennessee, and that he left therein estate, goods and chattels, rights and credits, the granting of the administration whereof belongs to this court; and Mrs. Josie C. Baker, the widow of the said Charles Baker, deceased, having applied for letters of administration on his estate, and she having a right thereto under the laws of the State of Tennessee, and the court being satisfied of her right to so administer, if is therefor ordered and decreed by the court that said application made by the said Mrs. Josie C. Baker for the granting of letters of administration on said estate to her be granted."

At another term of this County Court, held in December, 1912, it appears that Mrs. Baker presented a settlement of her accounts as administratrix, and thereupon this order was made: "It further appearing to the Court, from proof introduced to and heard by the Court, that the said Charles Baker died intestate, and at the time of his death was a resident of Hardin County, Tennessee, that he left no children or descendants of such surviving, but left surviving his widow, the said Mrs. Josie C. Baker, and, under the laws of the State of Tennessee, the said Mrs. Josie C. Baker, as the widow of the deceased, is entitled to all of the surplus personal property of the estate, and the court being of the opinion that she is entitled to receive and hold as her own individual property all of the surplus personalty of the estate, after payment of the debts of the same and the expenses of the administration, so adjudges and decrees."

It further appears from the settlements and orders of this court that the debts due by the deceased were few in number and trifling in amount,

and that the widow as administratrix had in her possession certificates of stock owned by the deceased in the corporation of Baker, Eccles & Company, of Paducah, of the value of \$27,000, and also some other personal assets of small value. On this showing it was ordered and adjudged by the court that Mrs. Baker as administratrix transfer and deliver to herself as the widow of the deceased all of the personal estate in her possession, including these shares of stock, and this was done as appears from the settlements and receipts filed in this court.

It will be observed that the order appointing Mrs. Baker administratrix recites that the Court heard proof on the subject of the place of the intestate's residence at the time of his death, but the record does not disclose what character of proof was heard, nor does it appear from the record that his mother or any other persons interested in his estate or its distribution were in any manner parties to this County Court proceeding or had any notice of it.

Subsequent to these proceedings in the County Court, and on December 28, 1912, Mrs. Josie C. Baker individually and as administratrix of Charles Baker filed in the Chancery Court of Hardin County, Tennessee, her petition in equity, or bill of complaint, as it is called in the Tennessee practice against Mrs. Augusta H. Baker, the mother, and E. W. Baker, the brother of the deceased, who were then residents of Paducah, Kentucky, and also against several persons who were residents of Hardin County, Tennessee. In her petition she set out her appointment as administratrix of the estate of Charles Baker in the Hardin County Court and averred that her husband died intestate, a resident of and domiciled in Hardin County, Tennessee, leaving surviving as his sole heir and distributee his widow, and as his only other heirs-at-law his brother, E. W. Baker, and his mother, Mrs. Augusta H.

Baker.

The petition further set up her ownership of the stock in the Paducah corporation of Baker, Eccles & Company, the interest of the deceased in several tracts of land in Tennessee, and averred that Mrs. Augusta Baker was asserting some claim and interest in the Tennessee lands owned by Charles Baker, and also to one-half of the personal estate left by him, upon the theory that he died a resident of the State of Kentucky, and under the laws of that State, his mother was entitled to one-half of his surplus personal estate.

The prayer of her petition was that Mrs. Augusta Baker and E. W. Baker be brought before the court in the manner provided for non-residents and be required to assert whatever claim they might have to the estate left by the deceased. She further prayed that it be adjudged that Charles Baker died a resident of the State of Tennessee, and that she, as his widow, was the sole distributee and entitled to all of his personal estate after the payment of his debts, and for all other and proper relief.

On the filing of this petition an order of publication was made citing Mrs. Augusta Baker and E. W. Baker, as non-residents, to make defense to the petition on a named day, and it is not questioned that these defendants were regularly proceeded against under the law of Tennessee, as non-resident defendants, although they did not appear in the action.

On April 7, 1913, an order was entered by the Court reciting that these non-resident defendants were regularly before the Court by publication and having failed to make any defense the petition, under the Tennessee practice, was taken for confessed as to them. It also appears that in April the depositions of several witnesses were taken for the plaintiff for the purpose of establishing among other things that Charles Baker was a resident of Tennes-

see at the time of his death.

On May 2, 1913, a judgment was entered in this chancery case adjudging that "the said Charles Baker at the time of his death was a citizen of and had his domicile at Savannah, Tennessee; that at no time was he a citizen of and domiciled at Paducah, Kentucky; that all of his life he was a citizen of and had his domicile at Savannah, Tennessee, and the court so adjudges and decrees."

It was further adjudged that his widow was the sole distributee, and as such entitled, in accordance with the laws of Tennessee, to the whole of the surplus personal property of which he died the owner. She was further adjudged entitled to the 270 shares of stock in the Baker, Eccles & Company corporation and the accumulated profits thereon.

This is all that need be said at this time respecting the proceedings in the Tennessee Courts and the orders and judgments therein made.

Turning now to the Kentucky Proceedings, it appears that on November 27, 1912, Mrs. Augusta Baker, mother of Charles Baker, was granted letters of administration on his estate by the County Court of McCracken County, Kentucky, and, on December 3, 1912, as such administratrix she filed a petition in the McCracken Circuit Court for a settlement of the estate of Charles Baker, and to this petition his widow and Baker, Eccles & Company were made defendants. In this petition it was averred that Charles Baker died a resident of McCracken county, Kentucky, the owner of shares of stock in the Baker, Eccles & Company corporation of the value of \$27,000, together with accumulated profits thereon, and some other articles of personal property, and also a claim of several thousand dollars against Baker, Eccles & Company. She also set up that herself and the widow were the only heirs-at-law of the decedent entitled to an interest in his estate, and that she was entitled to one-half

of his personal estate after the payment of debts and the widow to the other one-half.

In this action Mrs. Josephine Baker was proceeded against as a non-resident defendant, but whether she was brought before the court by virtue of these proceedings is a question that will later be disposed of. For the present it is sufficient to say that Mrs. Josephine Baker did not appear in this action, and on February 13, 1912, a judgment was rendered by the McCracken Circuit Court adjudging that Charles Baker died a resident of McCracken County, Kentucky, and that his mother, Mrs. Augusta Baker, under the Kentucky law, was entitled to one-half of the surplus personal estate of the deceased, and Mrs. Josephine Baker, as his widow, to one-half thereof.

In the judgment Baker, Eccles & Company was directed to cancel the 270 shares of stock in the corporation issued to Charles Baker and to re-issue one-half of these shares to Mrs. Josephine Baker and to re-issue the other half to Mrs. Augusta Baker. The remaining personal property found to be owned by the deceased after the payment of debts was also directed to be divided equally between these two persons.

In June, 1913, Mrs. Josephine Baker individually and as administratrix of Charles Baker, filed a suit in the McCracken Circuit Court against Baker, Eccles & Co., in which, after setting up the orders and judgments made in the Tennessee Courts and her sole ownership of the personal estate of the deceased by virtue thereof, she prayed that Baker, Eccles & Company be required to transfer to her individually the 270 shares of stock to which she was adjudged entitled by the Tennessee Chancery judgment, and also for judgment against it for \$11,429.17, in which amount she alleged it was indebted to her husband at the time of his death. With this petition she filed certified copies of all the proceed-

ings had in the Tennessee courts, together with a copy of the evidence heard in the Chancery Court of Tennessee.

To this petition Baker, Eccles & Company filed its answer putting in issue all the averments of the petition, and also relied on the judgment of the McCracken Circuit Court in the case of Mrs. Augusta Baker heretofore mentioned.

Mrs. Augusta Baker came into this suit by an intervening petition in which she averred that Charles Baker died a resident of the State of Kentucky, and that under the laws of this State, and by virtue of the judgment of the McCracken Circuit Court in the suit brought by her, she was entitled to the interest in the estate of Charles Baker decreed to her by the McCracken Circuit Court judgment, which she averred was binding and conclusive upon Mrs. Josephine Baker. She further put in issue the validity of the orders and judgments made in the Tennessee County Court, as well as in the Chancery Court of Tennessee, and averred that the judgments in each of these courts in so far as they determined that Charles Baker died a resident of the State of Tennessee, and that his widow was entitled to the whole of his personal estate after the payment of his debts were void, because neither of these Tennessee courts had jurisdiction to make orders or judgments so declaring, and she relied on the judgment of the McCracken Circuit Court in the suit brought by her as finally determining not only the domicile of Charles Baker at the time of his death, but the devolution of his estate.

After motions to strike out parts of the petition of Mrs. Augusta H. Baker, as well as demurrers thereto had been overruled, a reply was filed controverting the affirmative averments of the pleadings of Mrs. Augusta Baker, and it was further averred that the judgment rendered in the McCracken Circuit Court in so far as it attempted to determ-

ine the rights of Mrs. Josephine Baker was void, because she was not before the court by either actual or constructive service of process.

When the pleadings had been made up, a large amount of evidence was taken on the issue as to the residence of Charles Baker at the time of his death, and thereafter, the case having been submitted for hearing, it was adjudged that the petition of Mrs. Josephine Baker be dismissed, and from that judgment this appeal has been prosecuted.

From this necessarily extended statement of the proceedings in the Tennessee and Kentucky Courts it will be seen that the real question at issue in this case is whether the widow of Charles Baker is entitled to the whole of his surplus personal estate under the Tennessee law, or his mother, Mrs. Augusto Baker, to one-half of it, under the Kentucky law, and that the solution of this question depends upon the residence of Charles Baker at the time of his death and the force and effect to be given to the Tennessee and Kentucky judgments.

In behalf of Mrs. Josephine Baker the argument is made that the Tennessee judgments finding that Charles Baker died a resident of Tennessee are conclusive of this question whether in fact he died a resident of that State or not, and this being so, his widow, under the law of Tennessee, about which there is no dispute, was and is entitled to the whole of his surplus personal estate. It is further contended in this behalf that the Kentucky judgment rendered by the McCracken Circuit Court in the case of Mrs. Augusta Baker, in so far as it undertook to determine Mrs. Josie Baker's interest in the estate of her husband, was void, because she was not before the court either by actual or constructive service.

For Mrs. Augusta H. Baker the argument is made that Charles Baker died a resident of the State of Kentucky, and therefore the Tennessee

Courts had no jurisdiction to determine that he died a resident of Tennessee or to distribute his estate under the laws of Tennessee, and, further, that the Kentucky judgment determining the rights of the widow and the mother is and was a valid judgment, and, as it has not been modified or vacated or any appeal prosecuted therefrom, it finally determined the rights of the parties.

Other questions upon which these respective arguments rest will be noticed in the course of the opinion.

Taking up first the validity and effect of the judgment of the McCracken Circuit Court, which, as stated, determined that Baker died a resident of Paducah, Kentucky, and that his mother, under the laws of this State, was entitled to one-half of his surplus personal estate and his widow the other one-half, the conclusion we have reached with respect to this judgment renders it unnecessary to discuss its effect or do more than set forth the reasons that have brought us to the conclusion that it is void in so far as it affects the rights of the widow.

In the suit in which this judgment was obtained the widow was proceeded against as a non-resident defendant. She was not actually served with process, nor did she in any manner enter her appearance to this action; so that unless the warning order proceedings were sufficient to bring her before the court on constructive service, she cannot be treated as being in any manner affected by this judgment; in other words, her status is the same as if she had not been made a party to this suit.

Without setting out in full Sections 57-61 of the Code covering the subject of constructive service, we think it sufficient for the purposes of the question we have to say that Section 57 of the Code provides that a warning order may be made upon an affidavit showing that the defendant is a non-resident of this State and believed to be absent therefrom, and also

stating in what country the defendant resides or may be found and the name, or place where a post-office is kept nearest to the place where the defendant resides or may be found.

Other sections of the Code provide that when this affidavit is made the clerk of the court shall make an order warning the defendant to defend the action on the first day of the next term of the court which does not commence within sixty days after the making of the order. In other sections it is provided that the clerk at the time of making the warning order shall appoint an attorney whose duty it shall be to inform the defendant of the pendency and nature of the action and report to the court the results of his efforts.

In this suit no separate warning order affidavit was made, nor was it necessary that one should have been made if the petition itself, which was properly verified, contained the matter which should have been embraced in an affidavit. The verified petition upon this point averred that "Mrs. Josephine Baker has left the State of Kentucky and is now a non-resident thereof, and she resides at Savannah, in the State of Tennessee, at which place a postoffice is kept and which is the nearest postoffice to the residence of said Mrs. Josephine Baker."

When the petition containing this affidavit was filed, a warning order, in due form, was made and a warning order attorney was appointed as provided in the Code, who, before the judgment was rendered, filed in proper form and manner a report showing that he had written Mrs. Baker at the address named, informing her of the pendency and nature of the action against her, but had not received any reply. So that the defect, if any, in these warning order steps consists in the insufficiency of the affidavit upon which the warning order was made. This affidavit is the basis of warning order proceedings, and no warning order can be made by the clerk or

attorney appointed under it until the affidavit provided by the Code had been made.

It will be observed that the affidavit conforms strictly to the Code requirements except that it fails to aver that Mrs. Josie Baker is believed to be absent from the State. It sets out that Mrs. Baker has left the State and is a non-resident thereof, and gives the place of her residence in the State of Tennessee and her postoffice in that State, but there are no words in the affidavit that supply the place of the averment that was believed to be absent from this State at the time the affidavit was made. And we think this averment was indispensable to the sufficiency of the affidavit and that in its absence the clerk had no authority to make the warning order or to appoint the attorney. In cases like this it is alone the fact that the defendant is absent or believed to be absent from the State at the time the affidavit is made that authorizes the proceedings against him as a non-resident. If the defendant is not absent or believed to be absent from the State, he cannot be proceeded against as a non-resident and accordingly the court would have no jurisdiction on constructive service to enter a judgment affecting his rights. This is so because it is the making of the warning order that commences the action, and the clerk has no authority to make this order except on a sufficient affidavit.

Admitting this to be true, it is said that we should presume that the defendant was absent or believed to be absent from the State when the affidavit was made from the averment that the defendant was a non-resident of the State and resided in another State. But we do not think so. A defendant might be, legally speaking, a non-resident and yet be actually in the State and in the County where the suit was brought when the affidavit and warning order were made. *Redwine vs. Underwood*, 101, Ky., 190; *Warrick vs. McCormick*, 150 Ky., 800.

The argument is also made that, as this is a collateral attack on the validity of the judgment of the McCracken Circuit Court, every presumption must be indulged that the proceedings in that court were regular and every step necessary to give it jurisdiction to render the judgment was properly taken.

It is true that every presumption must be indulged to support a judgment against collateral attack, for in this respect there is a well defined and distinct difference between a direct and a collateral attack on a judgment. It is also well settled that on collateral attack a judgment cannot be successfully assailed unless it is void for a want of jurisdiction in the court to render the judgment that appears upon the record. *Bamberger, vs. Green*, 146 Ky., 258; *Maysville R. R. Co. vs. Ball*, 108 Ky., 241; *Dennis vs. Alves*, 132 Ky., 345.

We are also clear that the attack made on this Kentucky judgment was a collateral attack, as a direct attack on a judgment can only be made in the manner pointed out in the Code; that is to say, by prosecuting an appeal or by proceedings had under the Code and in the manner pointed out in Sections 340, 414 and 518 for the modification or vacation of judgments. An attack made on a judgment in any other way is a collateral attack. *Black on Judgments, Volume 1, Section 252*; *Vanfleet on Collateral Attack on Judicial Proceedings, Sec. 2*; *Duff vs. Hagins*, 146 Ky., 792.

Being then a collateral attack, will we presume that all the proceedings taken by the court necessary to sustain the validity of the judgment were regular? The rule upon this subject is that if the record is ancient or it does not affirmatively show everything that was done, the presumption will be that the things it does not show have been done in such manner as that if they appeared in the record there would be no defect and so the judgment on collateral

attack will be treated as erroneous, but not void, and consequently not subject to collateral attack. But if the record is fresh and affirmatively shows everything in such a way as that no presumption can be indulged in that something was done that does not show in the record, then the record must control, for there is no room to presume that something else may have been done that would cure the defect, and in this state of case if the defect is substantial the judgment is void and may be attacked collaterally. Supporting this rule reference may be had to *Hynes vs. Oldham*, 3 T. B. Mon., 266; *Benningfield vs. Reed*, 8 B. Mon., 102; *Newcomb vs. Newcomb*, 13 Bush, 544; *Carr vs. Carr*, 92 Ky., 522; *Wilson vs. Teague*, 95 Ky., 47; *Sears vs. Sears*, 95 Ky., 173; *Segal vs. Reishert*, 128 Ky., 117; *Steel vs. Stearns Coal & Lumber Co.*, 148 Ky., 429; *Kreiger vs. Sonne*, 151 Ky., 739.

The rule, however, favoring all presumptions that can be indulged in to sustain the validity of a judgment on collateral attack cannot be here invoked because the whole of a new record is here, and it affirmatively shows the absence of the conditions upon which the court had jurisdiction to render a judgment affecting the rights of a non-resident, and this being so, this judgment as to the widow must be treated as void. *Green's Heirs vs. Breckinridge's Heirs*, 4 T. B. Mon., 541; *Brownfield vs. Dyer*, 7 Bush, 505; *Arthurs vs. Harlan*, 78 Ky., 138; *Grigsby vs. Barr*, 14 Bush, 330; *Clark vs. Reason*, 126 Ky., 486.

But the invalidity of this judgment does not, as we will presently attempt to show, have the effect claimed by counsel for the appellant, or strengthen the case for the widow.

Taking up next the validity and effect of the Tennessee county court judgment, we are clearly of the opinion that so much of this judgment as undertook to adjudicate that the residence of

Charles Baker was in Hardin county, Tennessee, at the time of his death, and as a legal consequence of this his widow, under the laws of Tennessee, was his sole distributee and entitled to the whole of the surplus of his personal estate, was void so far as the rights of his mother were attempted to be affected. In view of the admitted fact that Charles Baker, at the time of his death, owned both real and personal estate in Hardin county, Tennessee, there can be no doubt that under the laws of Tennessee the county court of Hardin county had power and jurisdiction to grant letters of administration on his estate to his widow. This jurisdiction and power attached by virtue of the fact that he owned real and personal property in that county and was not dependent on the condition that he died a resident of that county. If he was, in fact, at the time of his death, a resident of McCracken county, Kentucky, the Tennessee county court would, under the circumstances, have had the same power and jurisdiction to grant letters of administration on his estate as if he had admittedly died a resident of Hardin county, Tennessee.

But it is one thing to grant letters of administration and another very different thing to determine the place of the intestate's residence for the purpose of affecting the devolution of his estate. The granting of letters of administration alone would not in any manner affect the devolution of his estate or determine the distributees or the shares to which they were entitled. The administrator would merely hold the estate in trust for the benefit of the persons entitled to the estate, with the duty of turning the estate over to such persons when their right was established and in the time and manner provided by the Tennessee law. So that the mother of Charles Baker could not and does not complain of so much of the Tennessee county court judgment as granted letters of administration upon his estate.

But manifestly this Tennessee county court could not, in this *ex parte* proceeding or application, instituted by the widow, to which his mother was not a party, on any kind of service or publication, have jurisdiction or power to adjudicate that the deceased was a resident of the State of Tennessee and thereby conclusively determine that his widow was entitled to the whole of his surplus personal estate and exclude his mother from participation. We do not know of any authority that would permit an interested party to be deprived of his right to make defense, or that would conclude him by a judgment rendered in the manner of this Tennessee judgment. Here we have two contestants for the personal estate of Charles Baker, each of them having at least some ground upon which to assert her right to an interest in his estate, and yet an inferior court, in the absence of one of the parties, undertakes to and does adjudge a fact upon which the other party becomes, by virtue of a local statute, entitled to the whole of this estate. It seems to us that a mere statement of this proposition is sufficient to conclusively refute the effect claimed for this county court judgment. It is fundamental law, recognized, as we think, by every court, that no person can be deprived in a legal proceeding of property to which he has or asserts claim unless he has been given notice in the manner provided by law, which may, generally speaking, be said to be actual or constructive notice of the pendency of the suit and that his right to the property is about to be determined and he must defend if he desires to save it.

Out of numerous authorities supporting these general statements we think it sufficient to refer to the leading case of *Pennoyer vs. Neff*, 95 U. S., 714, 24 L. Ed., 565. Another case involving a question very much like this was before the court in the case of *Overby vs Gordon*, 177 U. S., 214, 44 L.

Ed., 741. In the Overby case, which involved a contest over the distribution of the estate of one Haralson, it appears from a statement of the facts that a Mrs. Gordon instituted proceedings in an appropriate court of the District of Columbia for the purpose of probating the last will of Haralson and to obtain letters of administration. In this proceeding an issue was made as to the place of residence of the deceased at the time of his death, and there was introduced a record showing that administration on his estate had been granted by a probate court of the State of Georgia. The District of Columbia court ruled that he died a resident of the District of Columbia and denied the conclusive effect of the Georgia proceedings. In considering the case the Supreme Court said:

"The single question for consideration is, was the grant of letters of administration by the court of ordinary of De Kalb county, Georgia, competent evidence upon the issues tried in the Supreme Court of the District of Columbia respecting the domicile of the decedent at the time of his death?"

The order of the Georgia court granting letters of administration recited "that Haralson died a resident of De Kalb county, Georgia," and it was contended that this was a conclusive adjudication of the place of his residence, notwithstanding the fact that the proceedings were *ex parte* and that no notice to other interested parties was given sufficient to bring them before the court for the purpose of determining their rights. And the court said: "From the record of the proceedings instituted in the De Kalb County Court it is apparent that the ultimate purpose was to adjudicate upon and decree distribution of the estate of the deceased, the appointment of an administrator being a mere preliminary step in the management and control by the court of assets of the estate. The question of domicile would seem to have been important only

as establishing the particular court of ordinary which was vested with jurisdiction to administer the assets within the State of Georgia. The subject matter or res upon which the power of the court was to be exercised, was, therefore, the estate of the decedent."

Then, after an extended discussion of the question, the court said: "We are of the opinion that the De Kalb County Court possessed the power to determine the question of domicile of the decedent for the purpose of conclusively adjudicating the validity within the State of Georgia of a grant of letters of administration, but that it did not possess the power to conclusively bind all the world as to the fact of domicile by a mere finding of such fact in a proceeding in rem. In other words, proceedings which were substantially ex parte cannot be allowed to have greater efficacy than would a solemn contest inter partes, which would have estopped only actual parties to such contest as to facts which had been or might have been litigated in such contest.

"Our conclusion being that the adjudication of the fact of domicile in Georgia made in grant of letters by the De Kalb County Court, and which was not made in a contest inter partes, was of no probative force upon the question of domicile in a contest in a court of the District of Columbia in the course of proceedings for the administration of assets within said District, it results that the Supreme Court of the District did not err in excluding the transcript in question, whether tendered as evidence conducing to establish or as conclusively fixing the domicile of the deceased." To the same effect is *Thormann vs. Frame*, 176 U. S., 350, 44 L. Ed., 500.

If in a proceeding like the one had in this county court the rights of persons not in any manner parties to the proceeding could be conclusively de-

terminated and property to which they asserted claim be taken from them in the manner here attempted, it would follow that in all cases judgments might go affecting the rights of persons who were not parties to the proceedings, and this practice would of course be at war with the established doctrine that no person can be deprived of his property without opportunity to be heard in his defense. *Black on Judgments*, Vol. 1, Sec. 226; *Hovey vs. Elliott*, 169 U. S., 42 Law Ed., 215.

Our conclusion, therefore, is, upon this branch of the case, that the adjudication or the Tennessee county court that Baker died a resident of Tennessee, and accordingly his widow was entitled to the whole of his surplus personal estate, was absolutely void and open to attack in any court in which a claim under it might be asserted. *Spencer vs. Parsons*, 89 Ky., 577; *Francis vs. Lilly*, 124 Ky., 230; *Carpenter vs. Moorelock*, 151 Ky., 506; *Black on Judgments*, Vol. 2, Section 894.

Passing now to the chancery court judgement, we find that under the laws of Tennessee the chancery court occupies substantially the same position that circuit courts do in this State. In other words, Tennessee chancery courts are courts of general jurisdiction, and accordingly have the power to settle estates of deceased persons and determine the rights of conflicting claimants thereto, as well as all other matters that may be necessary in adjudicating the rights of the parties. So that the chancery court had jurisdiction to adjudge that Baker died a resident of Hardin county, Tennessee, and that his widow, under the laws of Tennessee, was entitled to the whole of his surplus personal estate. Admitting all this, and, further, that his mother was properly before the court on constructive service, the only remaining question is the effect to be given to this judgment of the chancery court when it is attempted to take under it personal

property having a situs in this State. We use the expression "having a situs in this State" because we think Baker died a resident of Kentucky, and accordingly the personal estate owned by him at his death and here in controversy had a situs in this State.

On this issue counsel for the widow urgently insists that this Tennessee chancery judgment, standing as it does unmodified and unreversed, conclusively settled not only in Tennessee but everywhere every question determined by it affecting parties who were before the court by actual or constructive service, and therefore its operation and effect could not be called in question when suit was brought on it in this State.

That it had in the State of Tennessee, where it was rendered, and as to property situated in that State, the conclusive effect claimed for it, may be readily admitted, but whether it shall have that effect as to property having a situs here is another question. It is a general rule of law that judgments of courts having jurisdiction of the person and subject matter of the action are conclusive until modified or vacated in the manner provided by the law of the State in which they are rendered upon the rights of all the parties who were before the court by such manner of process as would give the court jurisdiction of their person. But this rule is not without exceptions, and one of these exceptions arises, as we think, when a court undertakes to determine the descent and distribution of the estate of a person situated in another State so as to affect the rights of interested parties who have not been brought before the court by actual service of process and who have not entered their appearance. If Mrs. Augusta Baker, the mother, had entered her appearance in this Tennessee action or had been brought before the court by actual service of process, she would be conclusively bound

by the judgment in its effect upon property everywhere until she procured its modification or vacation in some manner allowed by the law of Tennessee. But, as she was only before the court by constructive service, we do not think the Tennessee judgment conclusively determined her right to the personal estate of Charles Baker that was situated in this State, although it did so determine it as to the property that had a situs in Tennessee, and this determination remains conclusive until it is overthrown by appropriate proceedings in the courts of Tennessee.

When suit was brought on that judgment in this State for the purpose of taking hold of the personal estate situated in this State, we think Mrs. Augusta Baker had the right to question the extra-territorial effect claimed for it. Or, in other words, to contend in opposition to the judgment that she was entitled to her share under the laws of this State of the personal estate of her son having a situs in this State at the time of his death; leaving, however, in full force and affect the judgment so far as it operated upon the estate of Baker situated in the State of Tennessee at the time of his death, and giving to it in that State the full faith and credit to which it was entitled under the laws of Tennessee.

An interesting and sound discussion of the effect of the judgment of a sister State rendered on constructive service when attempted to be made operative upon property located in another State, may be found in *Williams vs. Preston*, 3 J. J. Mar., 600. In that case the court said: "It appears from the record that the appellant was 'no inhabitant' of Virginia, when the suit in chancery was instituted. . . . Taking it therefore as conceded that he was not only a resident but a citizen of Kentucky, we are of the opinion that the decree against him can have no other effect than to operate on his

property which was within the jurisdictional limits of Virginia, and to attach which the suit in chancery was instituted.

"No court in Virginia could rightfully render a decree 'in personam' against a citizen of Kentucky, unless by being in Virginia and served with process, or by entering his appearance, he gave the court personal jurisdiction. Either the person or some of his property must be within the jurisdiction of a court before it can render any decree against the person or thing. The property does not give jurisdiction over the person. If a citizen of Kentucky own property in Virginia that property is subject to the laws of Virginia and her courts may have jurisdiction over it. But he, whilst he shall remain in Kentucky, is not subject to the laws of Virginia, nor can her courts exercise any jurisdiction over him, except so far as to reach his property in Virginia.

"So the court of chancery of Virginia had jurisdiction over the chose in action of the appellant, which was attached; but its power extended no farther. It could sequester the property and subject it to the payment of the appellee's debt, but it had no power to render a decree against the appellant affecting him otherwise than by acting on his property in Virginia." To the same effect are *Harris vs. John*, 6 J. J. Mar., 257; *Brand vs. Brand*, 116 Ky., 785; *Downs vs. Downs*, 123 Ky., 405; *Ely vs. Hartford Life Ins. Co.*, 128 Ky., 799; *Freeman on Judgments*, Sections 564, 584; *Black on Judgments*, Sections 794, 795, 904 and 905.

In view of these authorities and many others that might be cited, we think it safe to state it is a rule of general application that a court of one State has no jurisdiction to enter a judgment on constructive service affecting real or personal property situated in another State, its jurisdiction being confined to affecting by its judgment property

situated in the State where the judgment was rendered.

This being so, it seems to us that there is no sound reason, so far as the rights of the parties to this suit are concerned, why this rule should not be applied in this case. The attempt is here made to affect property situated in this State by the Tennessee judgment to the same extent as if it was sought to effect it by a judgment in an attachment suit or a suit to enforce a mortgage or other lien obtained in the Tennessee court on constructive service.

But it is said by counsel that as the chancery court had unquestioned jurisdiction to determine that Baker was a resident of Tennessee, and as that was within the proper scope of the suit brought, the adjudication that he was a resident is conclusive upon this subject, and therefore it follows as an inevitable result of this that the widow is entitled to all of his surplus personal estate no matter where situated, if it were such character of personal estate as had a situs at the residence of the owner. It may be admitted that the question of Baker's residence was a proper subject for adjudication in that suit, but this adjudication should not be given extra-territorial effect when to do so would be to determine the status of property having a situs in this State.

It would be the merest evasion of the principle we have announced to say that a court on constructive process could not directly settle the descent and distribution of property in another State, but might conclusively but indirectly settle it by adjudging another point upon which the devolution of the foreign estate would depend, and this is precisely the effect here claimed for this Tennessee judgment. If this were a sound rule, then, for example, a judgment on constructive service might be rendered against a citizen of one State by a court of another

State to the effect that he had signed and delivered the note sued on and it was a just and existing debt against him without going any further, and if suit were brought in the State of his residence upon this judgment, the defendant would be denied the right to make any defense that would defeat the debt, and judgment would inevitably go against him for the amount of it. It would further follow as a result of the recognition of the doctrine asserted by counsel that if a person died intestate in one State owning property in several States, the judgment first rendered in a court of any of these States that determined that he was a resident of that State, with all the parties in interest before the court by constructive service, would affect in a conclusive and unimpeachable way the descent of his property in every State in which it was situated, although, in truth and in fact, the intestate may not have been a resident of the State.

In other words, under this rule, if a man died intestate, leaving estate situated in several States, and a suit setting up his residence therein was brought in each of these States by some of his heirs for the purpose of determining the descent and distribution of his estate, and the heirs residing in each of the other States were brought before the court by constructive service, then the judgment that was first rendered, if it recited that the deceased died a resident of that State, would be conclusive on the rights of all the heirs and settle the title to the estate situated in each of the States. The further effect of this doctrine would be that the rights of heirs in cases like this would be determined, not on the justness or merits of their respective claims, but on their diligence or ability to obtain the first judgment. It would be a race as to which could obtain the first judicial recognition of his asserted rights, with the prize depending on the speed with which the judicial machinery in each

of the several States could be put in motion and adjudicate the question presented.

It appears to us that this method of settling the property rights of conflicting claimants by judicial action ought not for a moment to be entertained. It would give to the swift an advantage they ought not to have and take from the slow rights of which they ought not to be deprived.

How, then, it may be asked, and indeed is, are the rights of heirs to be determined when there is property of the decedent situated in several States? Our answer is, that the courts of each State in which the estate has a situs at the time of the death of the deceased have jurisdiction, in a suit brought for that purpose, and in which all of the interested parties are brought before the court by constructive service of process, to determine between them their respective rights to the property situated within the State. And if one or more valid domestic judgments are thus rendered, the force of these judgments is to be confined within the jurisdiction of the court rendering the judgment, the order in which the judgments were rendered not being controlling, the last judgment being equally as effective as the first and the first of no more force than the last.

With this status existing between heirs having antagonistic interests, each relying upon the judgment most favorable to him, the question comes, how could the heirs who were not satisfied with the property received under the judgment they had obtained impeach or overthrow the judgment in the other State? Our answer to this is, that the parties to any of these judgments may take the judgment they depend on and go into any of the other States in which judgments were rendered, or in other States in which estate is situated, and bring a suit in a court of competent jurisdiction in that State for the purpose of having the rights of the parties

to the property in that State settled, and in that court the rights of all the parties in interest who are brought before the court by actual service of process, or who entered their appearance would be conclusively settled as to the property in that State by the judgment rendered in the suit so brought, subject, of course, to the right to have it modified or reversed according to the practice of the State. This case furnishes a good illustration of our meaning. Mrs. Josephine Baker brought in the McCracken Circuit Court a suit on the Tennessee judgment, and Mrs. Augusta Baker entered her appearance to that suit. So that the court had complete jurisdiction of both the person and subject matter and the right to render a judgment that would be conclusive as between the parties as to the property situated in this State, leaving the Tennessee judgment in full effect as to the property situated in that State.

The remaining question, and the one that, according to our view of the law, is decisive of the rights of the parties to the property in this State is, was the domicile or legal residence of Charles Baker in Tennessee or Kentucky at the time of his death? This question we are fully authorized to conclusively dispose of, because all the parties are actually before the court and each of them has had opportunity to make defense to the claim asserted by the other. If Charles Baker died a resident of Kentucky, then his personal estate, practically all of which has a situs at the place of his residence, passed under the law of descent and distribution in this State. On the other hand, if he died a resident of the State of Tennessee, then it must pass under the laws of that State. We think he died a resident of this State, and will proceed to state the reasons that have induced us to come to this conclusion.

That he was born in Tennessee and lived there

until 1901, when he moved to Paducah, Kentucky, where he lived until he died, is admitted. Tennessee being then his domicile of origin, using the word domicile interchangeably with legal residence, the disputed issue is, did he change his residence and take up a residence of choice in Paducah? If he did the presumption is that his domicile of choice continued until his death.

On the one hand, it is contended that he came to Paducah with the intention of making that his residence and continued a resident of that place until his death, or, that whatever his intention was, his acts and conduct after he came to Paducah constituted him in law a resident of that place.

On the other hand, it is contended that he came to Paducah merely for the purpose of engaging in business without any intention of making it his home, and never established by his acts or conduct a legal residence in Paducah.

The legal principles determining the place of residence when it is in dispute are fairly well established. The difficulty arises only when it is attempted to apply these principles to the facts of each particular case. Generally speaking, a person cannot have a legal residence in two States or countries, although he may have an actual residence in many places. His actual residence may be in one place and his legal residence may be in another. It does not always follow that the place of actual residence is the place of legal residence, as a person may have an actual residence at a place where he is only temporarily located and where he has no intention of remaining permanently or indefinitely, while his legal residence will be at that place where he intends to remain permanently or indefinitely. Often, too, the place of legal residence is fixed both by intention and acts, and where both of these conditions concur, there is little trouble in determining the residence; but in other cases it is difficult

to reconcile the intention with the acts, and when a condition like this arises, the law will, from facts and circumstances, fix the legal residence of the party.

Out of a great number of cases on this subject we think the following may be selected as stating in a general way the rules of law that control. In *Williamson vs. Osenton*, 232 U. S., 619, 58 L. Ed., 758, the Supreme Court, quoting with approval authorities said: "If a person has actually removed to another place, with an intention of remaining there for an indefinite time, and as a place of fixed domicile, it is to be deemed his place of domicile, notwithstanding he may entertain a floating intention to return at some future period."

In *Ringgold vs. Barley*, 5 Md., 186, 59 Am. Dec., 107, the court said: "Whence once removed to his new domicile, however, the party's purpose to remain need not be fixed and unalterable. If it becomes a place of fixed present domicile, it will be sufficient to fix a residence, and although there may be a floating intention to return to his former place of abode at some future period, still these circumstances will not defeat the newly acquired residence or the rights and obligations which attach to it."

In *Gilman vs. Gilman*, 52 Me., 165, 83 Am. Dec., 502, the court said: "But if a citizen of Maine, with his family, or having no family, should go to California to engage in business there, with the intention of returning at some future time, definite or indefinite, and should establish himself there, in trade or agriculture, it is difficult to see upon what principle his domicile could be said still to be here. His residence there, with the intention of remaining there a term of years, might so connect him with all the interests and institutions, social and public, of the community around him, as to render it not only proper but important for

him to assume the responsibilities of citizenship, with all its privileges and its burdens. Such residences are not strictly within the terms of any definition that has been given; and yet it can hardly be doubted that they would be held to establish the domicile."

In *Helm's Trustee vs. Com.*, 135 Ky., 392, this court, quoting with approval *Cooley on Taxiation*, said: "No exact definition can be given of domicile. It depends upon no one fact or combination of circumstances, but from the whole, taken together, it must be determined in each particular case. . . From this point of view it is manifest that very slight circumstances must often decide the question. It depends upon the preponderance of evidence in favor of two or more places; and it may often occur that the evidence of fact tending to establish the domicile in one place would be entirely conclusive were it not for the existence of facts and circumstances of still more conclusive and decisive character, which fix it beyond question in another."

In *Boyd's Exor. vs. Com.*, 149 Ky., 764, the court quoted with approval this language: "It is difficult to lay down any rule under which every instance of residence could be brought, which may make a domicile of choice. But there must be to constitute it actual residence in the place, with the intention that it is to be a principal and permanent residence. That intention may be inferred from the circumstances or conditions in which a person may be as to the domicile of his origin, or from the seat of his fortune, his family and pursuits of life. A removal which does not contemplate an absence from the former domicile for an indefinite and uncertain time is not a change of it. But when there is a removal, unless it can be shown or inferred from circumstances that it was for some particular purpose, expected to be only of a temporary nature, or in the exercise of some particular profession,

office or calling, it does not change the domicile." *City of Lebanon vs. Biggers*, 117 Ky., 430; *Graves vs. City of Georgetown*, 154 Ky., 207, and *City of Winchester vs. VanMeter*, 158 Ky., 31, are also illustrative cases upon this subject.

When we come now to attempt to apply the principle of these cases we are confronted with a mass of evidence on the subject of Baker's intention that is apparently in conflict with his acts and conduct, but out of all of it we think sufficient facts and circumstances can be gleaned to establish with certainty Paducah as the place of his legal residence when he died.

That he was warmly attached to Savannah, Tennessee, the place of his birth, and his home for many years, is shown by many statements made by him to different persons and at different times and places; and there is also much evidence of his expressed intention to return at some time to Savannah and make that place his permanent home. For example, he would often say that his home was at Savannah. That neither he nor his wife would be happy until they got back there. That he was going to build a house at a certain place in Savannah, and that he was in Paducah only for the purpose of making money, and after he had accumulated a sufficiency he was going back to his old home in Tennessee.

When approached by candidates at Paducah and asked to vote for them, he would often say he could not do it because he voted in Tennessee. He would also say that he never owned a home in Paducah and did not own any real estate there, and did not want to buy any, as when he bought a home he was going back to Tennessee. Other witnesses say that he took an interest in Tennessee politics and at times observed that he did not want to give up his citizenship in that State. He told others that he had never voted in Paducah; that it

was a good place in which to make money, but not to live; and on one occasion when speaking to a lawyer about writing his will he told him that his home was in Tennessee and that he never claimed Paducah as his home. To other persons he said that he never paid any taxes in Kentucky, as he was a citizen of Tennessee and voted there and paid his poll tax there and expected to die there. There is also evidence that at the time of his death he was going to Savannah for the purpose of making some arrangements about building a house there. And it appears that he was assessed and paid a poll or head tax in Hardin county, Tennessee, in 1901 and 1902 and also in 1906.

That he had an affectionate regard for the State of his birth may well be conceded, but many of his expressions of attachment for the State and its people are attributed to the circumstance that the firm of Baker, Eccles & Company drew a large part of its business from the State of Tennessee, and its members were especially anxious to retain the friendship and good will of Tennessee people. With this business object in view it appears that they never neglected an opportunity to indulge in agreeable speeches about that State. As Illustrating this, E. W. Baker, a brother, who moved from Savannah to Paducah at the time the firm was organized, said: "As a matter of policy for the benefit of the business we referred continually to Savannah as home and our attachment for the place and done everything of the kind that we could think of that would foster a sentiment on the Tennessee River in favor of our business."

It is also manifest from the evidence that Charles Baker was a very genial man, with a disposition to be on friendly terms with every person with whom he came in contact. He liked to leave everyone in a good humor and made it a point to do and say things that would make a favorable impres-

sion on all with whom he had intercourse. As an example of this, it is shown that in telling candidates for office in Paducah that he could not vote for them, he gave as a reason that his home was in Tennessee in order to get rid of their importunities on the easiest terms and in such a way as not to give offense.

It is easily explainable why he paid his poll tax in Tennessee in 1901 and 1902, as it seems he did not leave there until some time in 1901, but why he should have paid a poll tax there in 1906 is not explained by the record. It is certain, however, that he did not pay any poll tax there in 1903 or 1904, or after 1906, and it is also shown in a very satisfactory way that after 1901 he did not cast a vote in the State of Tennessee.

If the place of Baker's residence had to be determined alone by intention manifested in speeches without any reference to the acts and conduct, that will presently be referred to, we would have little doubt in adjudging that he never lost his legal residence in Tennessee and only had an actual residence in Paducah for the purpose of conducting the business in which he was there engaged, all the while having it in mind to return to Tennessee when the objects of his sojourn in Paducah had been accomplished.

But when we turn to the other side of the case we find abundant reason for the opinion that, notwithstanding the "floating intention," as it is expressed in some of the cases, of Baker, he not only had an actual residence in Paducah, but acquired a legal residence there, which he retained until his death. He was not only actively engaged in business in Paducah for about eleven years continuously, but he actually resided there during the whole of this time and took an active part in the politics of the place. Several witnesses testify that he told them when candidates for office that he would vote

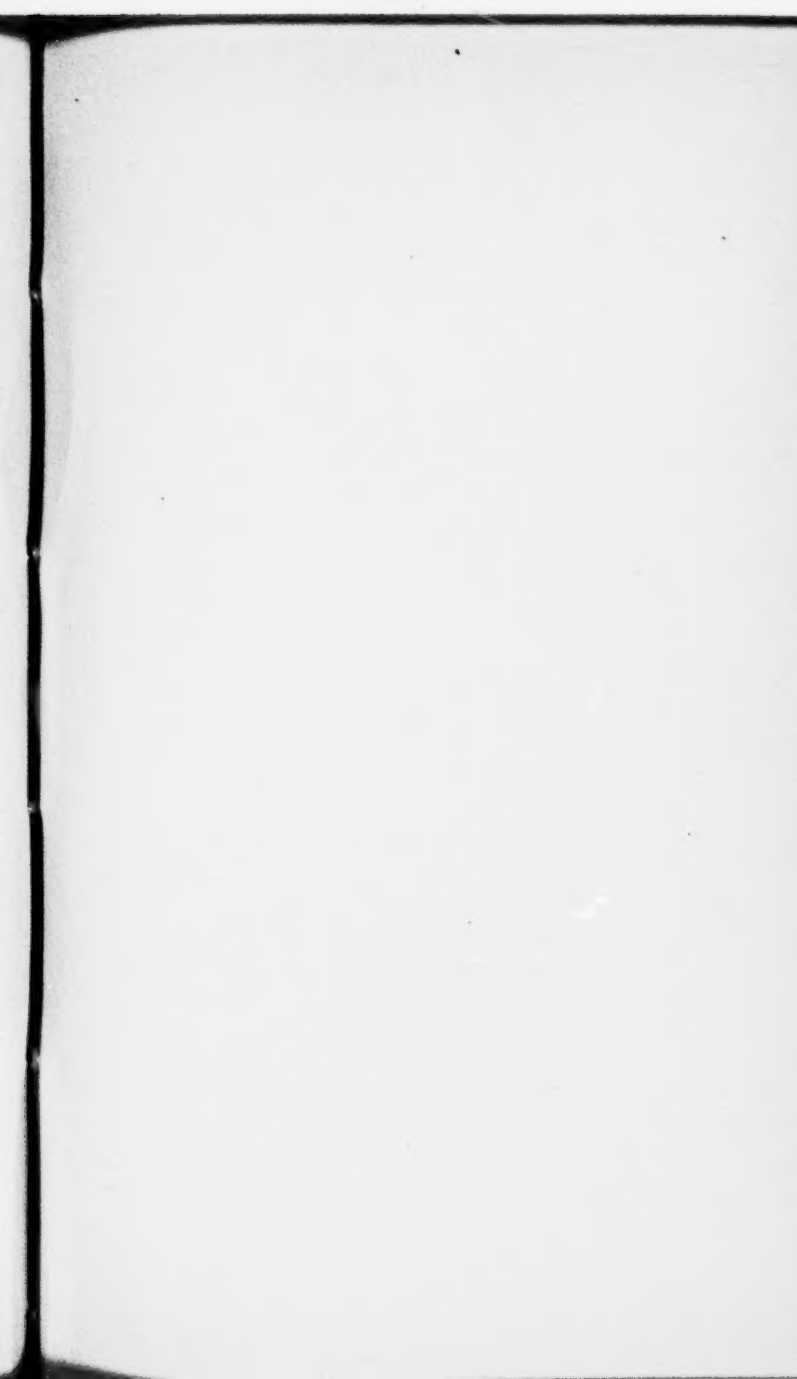
for them, and after election told them that he had voted for them. There is also evidence that he registered as a voter and paid a poll tax there. He was thoroughly identified with the social and business life of the place while he lived there, and, in short, so far as his acts and conduct was concerned, he was as much a citizen of Paducah as any other person who lived there; and about an hour before he died told the captain of the steamboat on which he was being carried on his expected visit to Savannah that "he was going to Savannah and would probably stay there until after the fair and was then coming back to Paducah and would vote for Wilson."

It is true he did not own a home in Paducah, but as he had no family except his wife, he probably thought, as do many other people so situated, that he could board with more comfort and less expense than he could keep house. He had no business interests in Tennessee except the land that had been given to him, and that was rented out. If, under these facts and circumstances, Baker could not be regarded as a citizen and resident of Paducah, it would be difficult to establish the place of legal residence on conflicting evidence.

For the reason stated, we think the judgment dismissing the petition of Mrs. Josie Baker should be affirmed, as the effect of the order of dismissal was to adjudge that Charles Baker died a resident of Kentucky, and, therefore, his mother was entitled to one-half of his surplus personal estate in this State and his widow to the other one-half. It is true the judgment appealed from did not so decree, but it is evident that the court merely dismissed the petition instead of entering such a judgment because it was of the opinion that the judgment rendered in the suit of Mrs. Augusta Baker, as administratrix, against Mrs. Josie Baker sufficiently determined the rights of the

parties, and it was unnecessary to again adjudge the matter. But, on a return of this case, the lower court will enter a judgment that Charles Baker died a resident of Kentucky, and that his mother, Mrs. Augusta Baker, is entitled to one-half and his widow, Mrs. Josie Baker, to one-half of his personal estate situated in this State at the time of his death, after the payment of his debts. The judgment should also direct Baker, Eccles & Company to cancel all certificates of stock issued by it to Charles Baker and to re-issue one-half of the shares to Mrs. Josie Baker and one-half to Mrs. Augusta Baker. Such other matters may be embraced in the judgment as will, after the payment of debts, distribute equally between the widow and the mother all other personal estate situated in this State of which Charles Baker died possessed.

Wherefore, the judgment is affirmed.



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NOTE.—The decision of this case will determine whether it is possible, under our system of laws, for any Court whatsoever to authoritatively and finally determine the *place of domicile*, and thereby fix the *lex domicilii* and *ascertain the distributees*, of a deceased intestate who leaves personal property situated in two or more states.

If the judgment complained of be affirmed, then that task will be *utterly and absolutely impossible*, in a very numerous and important class of cases, and the *lex domicilii* as controlling distribution will become, in such cases, a mere theoretical abstraction.

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 936.

JOSIE C. BAKER

Individually, and as Administratrix of
Charles Baker, Deceased,
Plaintiff in Error,

VS.

BAKER, ECCLES & COMPANY

AND

AUGUSTA H. BAKER,

Individually, and as Administratrix of
Charles Baker, Deceased,
Defendants in Error.

**In Error to the Court of Appeals of
the State of Kentucky.**

BRIEF OF PLAINTIFF IN ERROR IN OPPOSITION TO MOTIONS.

There is no basis for these motions.

The first—to dismiss because this Court has not jurisdiction—is not noticed at all in the supporting brief; and that the jurisdiction exists is

too clear for discussion. See Assignment of Errors, Printed Rec., 107-109; Opinion, *Id.*, 84-103.

The second—to affirm because the writ is taken and prosecuted for delay only, and the questions presented are so frivolous as to need little or no argument—is equally untenable. As to delay, the nature of the case excludes the possibility of any motive for it, or anything to be gained by it, on the part of Plaintiff in Error; and as to the questions presented, they are, as will appear from the Assignment of Errors and Opinion of the State Court, of the gravest character, not only as they affect the immediate parties but in their relation to the general body of the law. These questions we shall state and discuss in this brief.

The third motion—to transfer for hearing to the summary docket because the case does not require extended argument—is without merit; nevertheless, if sufficient time be allowed to fully brief the case, Plaintiff in Error will not resist this course, as she is desirous of a hearing as early as practicable.

QUESTION FOR DECISION.

Briefly stated, the question for decision is this:

Assuming the death of an intestate owning personal property in several states and leaving next of kin residing in several states, and a lawful administration in a state wherein the intestate died and some of the next of kin reside, and wherein all the real estate and a substantial part of the personal property of the intestate are situated—can a Court of Chancery in such state, having general jurisdiction, including the settlement and distribution of estates of deceased persons, in a suit brought by the lawful personal representative, finally adjudge and determine the *place of domicile* of the intestate at the time of death, so as to conclude next of kin residing in other states and made parties by publication in conformity with the laws of the state of the forum?

The Plaintiff in Error maintains the affirmative, and the Defendant in Error the negative. This suit was brought in Kentucky, and based on such a judgment in Tennessee. The Kentucky Court of Appeals, *recognizing all the facts we have assumed*, held the negative of this

question, and our complaint is that it thereby failed to give that due faith and credit to the judgment of the Chancery Court in Tennessee, which is required by the Constitution and Acts of Congress of the United States.

We have stated only the principal question presented by this writ of error. A similar point was made, and is preserved in the record, on the judgment of the County Court in Tennessee, which granted the letters of administration; but conceiving that, owing to the limited jurisdiction of that Court and the summary and *ex parte* nature of the proceeding therein, there is ground for doubting the conclusiveness of its finding as to domicile—especially as such finding was not *necessary* to its lawful grant of letters of administration—we do not emphasize, on this motion, that aspect of the case.

There was no question of the due and proper authentication of the record of the proceedings and judgment of the Tennessee Chancery Court, nor of the entire regularity thereof—in fact, both were and are now conceded. And the Assignments of Error on that judgment are the Fourth, Fifth, Sixth, Seventh and Eighth, on pages 108 and 109, printed record, which are as follows:

“Fourth. The record of the judicial proceedings by Plaintiff in Error against De-

fendant in Error Augusta H. Baker, in the Chancery Court of Hardin County, Tennessee, wherein the domicile of Charles Baker, deceased, at the date of his death, was regularly and validly adjudged to have been in the State of Tennessee and the Plaintiff in Error to be his sole distributee, having been duly authenticated in accordance with the laws of the United States and produced and suit based thereon in the State of Kentucky, the said judgment of the Court of Appeals of said State of Kentucky failed and refused to give to said judicial proceedings and judgment of the Chancery Court of Hardin County, Tennessee, such faith and credit as they have by the law and usage in the Courts of said State of Tennessee.

Fifth. The said judgment of the Court of Appeals of the State of Kentucky erroneously failed and refused to give to said judgments of the County Court, and of the Chancery Court, of Hardin County, in the State of Tennessee, determining the place of domicile of Charles Baker, deceased, any faith and credit or any force and effect whatsoever, in the State of Kentucky; and erroneously heard and considered evidence on the question of such place of domicile, and on such evidence erroneously overturned and nullified the findings and judgments of said County and Chancery Courts of Tennessee on that issue of fact.

Sixth. The said judgment of the Court of Appeals of the State of Kentucky erroneously held and adjudged that the Chancery Court of Hardin County, Tennessee, conceded to be a Court of superior and general jurisdiction, in a confessedly regular and valid proceeding brought in accordance with the laws of that state by the lawful personal representative of the intestate decedent, Charles Baker, appointed there and charged with the duty of distribution of his personal estate, a substantial part of which was located there, and against all persons interested and who were brought before such Court either by personal or by constructive service as required by the laws of that state in such cases, could not decide and finally determine the issue of fact as to the place of the domicile of the intestate so as to bind and conclude a non-resident defendant brought before such Court by constructive service and who did not personally appear and defend; and erroneously held and adjudged that such finding and judgment of the Chancery Court of the State of Tennessee might be collaterally attacked and disregarded by such non-resident defendant, in the State of Kentucky.

Seventh. The said Court of Appeals of the State of Kentucky, having erred in the respects above indicated, erroneously affirmed the judgment of the McCracken Circuit Court in the State of Kentucky dis-

missing the suit of petitioner therein, because there are no other matters or grounds contained in the record which can warrant or sustain such dismissal and affirmance.

Eighth. The said Court of Appeals of the State of Kentucky, having held and treated the proceeding and judgment of said Chancery Court of Hardin County, Tennessee, as regular and valid within the State of Tennessee, and as having conclusively established in that state that the domicile of Charles Baker was in the State of Tennessee so as to entitle Plaintiff in Error to all his personal estate within the State of Tennessee, the said Court of Appeals of the State of Kentucky erred in failing and refusing to hold and adjudge that said judgment was effective to entitle Plaintiff in Error to the certificates of \$27,000 of stock in the Corporation of Baker, Eccles & Company, which certificates were then and there present and in the custody and jurisdiction of said Tennessee Chancery Court."

Pr. Rec., pp. 108, 109.

THE FACTS.

Less than a dozen lines of the brief of adversaries are given to a statement of the facts (brief, page 10); and even these consist, in part, of an assumption of the fact in dispute, and, in

part, of matter contrary to the record. Naturally no pages of the record are cited. The statement is very misleading even as to matters now proper for consideration.

As to the *place of domicile* of Charles Baker, the intestate, at the time of his death—that was a matter of dispute. That question had to be decided by some Court, somewhere, before any administrator, anywhere, could make distribution of the personal effects in his hands; for until that question was determined the distributees could not be ascertained.

The material facts, now for consideration, are not those tending to establish *where the domicile was*, but are those only which relate to the competency of the forum undertaking to decide that question; and these are not in controversy.

These facts are:

1. Charles Baker, at his death, owned real estate to a considerable amount (all he owned at all), in Hardin County, Tennessee, where he was born and raised and where he married and was buried; and also personal property, consisting of moneys in bank and rents and debts due him, amounting to some \$1,000 to \$1,200. He also owned stock in a Kentucky corporation located at Paducah, amounting at face value to \$27,000, and a debt against said corporation es-

timated at \$7,000 to \$11,000; but he owned no home or land in Kentucky.

2. He left no children or issue, but left a widow, residing at Savannah, in Hardin County, Tennessee, and his mother and only brother, residing at Paduach, in McCracken County, Kentucky.

3. He died suddenly, on September 1, 1912, in Humphreys County, Tennessee, while on his way from Paducah to Savannah.

4. At the November Term, 1912, of the County Court of Hardin County, Tennessee, the widow, Plaintiff in Error here, was duly appointed and qualified as administratrix of her husband, the said Charles Baker, and it is conceded by adversaries that this appointment was regular, lawful and valid.

5. In December, 1912, the widow, both personally and as administratrix, filed her bill in the Chancery Court of Hardin County, Tennessee, against sundry persons residing in that county, and her husband's mother and brother, residing in the State of Kentucky, for the following purposes:

- (a) To in pound property and collect certain debts due her husband's estate, and to that end to have a receiver appointed;

- (b) To have dower assigned to her out of the lands of her husband's estate;
- (c) To have declared void certain alleged claims of her husband's mother to a life estate in certain of her husband's lands; and,
- (d) To have the place of domicile of her intestate husband at the date of his death determined and adjudicated and her rights as distributee declared.

Pr. Rec., pp. 6-15.

All the relief sought, except that concerning the mother's claim upon the lands, was in due course obtained—the said Chancery Court, upon full hearing and elaborate proof, adjudging on final hearing, May 2, 1913, that the said Charles Baker at the time of his death—

“was a citizen of and had his domicile at Savannah, Tennessee, that at no time was he a citizen of and domiciled at Paducah, Kentucky, that all of his life he was a citizen of, and had his domicile at Savannah, Tennessee.”

And the said Court consequently further adjudged that, according to the laws of Tennessee, the complainant widow was the sole distributee of her husband and entitled to all his personal estate. (Pr. Rec., 26, 27.)

That this proceeding and judgment was entirely regular and in accordance with the laws of Tennessee, and valid and conclusive in that state, is conceded by adversaries and by the learned Court of Appeals of Kentucky.

Moreover, it is conceded by the learned Court of Appeals of Kentucky that this Tennessee judgment finally and conclusively settled *that the domicile of Charles Baker was in Tennessee*, at the date of his death, as to all persons both within and without the state; that these Defendants in Error cannot question or overturn *that finding*; but, notwithstanding the fact that the domicile of a deceased intestate when once established controls the succession of his whole personal estate wherever situated, that learned Court held that such finding and judgment only affected personal property *within the state of the forum*, and was not effective on personal property physically located in other states.

That learned Court states and decides the proposition as follows:

“But it is said by counsel that as the Chancery Court had unquestioned jurisdiction to determine that Baker was a resident of Tennessee, and as that was within the proper scope of the suit brought, the adju-

dication that he was a resident is conclusive upon this subject, and therefore it follows as an inevitable result of this that the widow is entitled to all of his surplus personal estate, no matter where situated, if it were such character of personal estate as had a situs at the residence of the owner. It may be admitted that the question of Baker's residence was a proper subject for adjudication in that suit, but this adjudication should not be given extra-territorial effect when to do so would be to determine the status of property having a situs in this state." (Pr. Rec., 96.)

And again, the learned Court, perceiving the confusion to which such a conclusion inevitably leads, points out its answer—which we submit is confusion worse confounded—as follows:

“How, then, it may be asked, and indeed is, are the rights of heirs to be determined when there is property of the decedent situated in several states? Our answer is, that the Courts of each state in which the estate has a situs at the time of the death of the deceased have jurisdiction, in a suit brought for that purpose, and in which all of the interested parties are brought before the Court by constructive service of process, to determine between them their respective rights to the property situated within the state. And if one or more valid domestic judgments are thus rendered, the force of

these judgments is to be confined within the jurisdiction of the Court rendering the judgment, the order in which the judgments were rendered not being controlling, the last judgment being equally as effective as the first and the first of no more force than the last.

With this status existing between heirs having antagonistic interests, each relying upon the judgment most favorable to him, the question comes, how could the heirs who were not satisfied with the property received under the judgment they had obtained impeach or overthrow the judgment in the other states? Our answer to this is, that the parties to any of these judgments may take the judgment they depend on and go into any of the other states in which judgments were rendered, or in other states in which estate is situated, and bring a suit in a Court of competent jurisdiction in that state for the purpose of having the rights of the parties to the property in that state settled, and in that court the rights of all the parties in interest who are brought before the Court by actual service of process, or who entered their appearance would be conclusively settled as to the property in that state by the judgment rendered in the suit so brought, subject, of course, to the right to have it modified or reversed according to the practice of the state. This case furnishes a good illustration of our meaning. Mrs. Josie Baker brought in the McCracken

Circuit Court a suit on the Tennessee judgment, and Mrs. Augusta Baker entered her appearance to that suit. So that the Court had complete jurisdiction of both the persons and subject-matter and the right to render a judgment that would be conclusive as between the parties as to the property situated in this state, leaving the Tennessee judgment in full effect as to the property situated in that state." (Pr. Rec., 97, 98.)

We quote these paragraphs for the purpose of more clearly presenting the questions and issues, and not for the purpose of combatting them here—that we reserve for its proper place in the—

BRIEF AND ARGUMENT.

I.

POINTS AND AUTHORITIES OF DEFENDANTS IN ERROR.

The authorities cited in the brief of adversaries fall far short of supporting the judgment in question. They do fairly establish certain propositions, not at all vital or even involved here, namely:

1. That a *personal* judgment against a non-resident upon publication or other constructive

service, without actual personal service or appearance, is void. *D'Arcy v. Ketchum*, 11 How., 165; *Pennoyer v. Neff*, 95 U. S., 714; *National Exchange Bank v. Wiley*, 195 U. S., 257; *Old Wayne, etc., Ins. Co. v. McDonough*, 204 U. S., 8; *Williams v. Preston*, 3 J. J. Marsh. (Ky.), 600, and other Kentucky cases cited in brief.

This proposition is recognized not only by this Court, but by the Courts of all the states, including Tennessee; but it obviously has no application here, for the Tennessee Chancery proceeding here in question involves no personal judgment against the non-residents—none was sought or obtained.

2. That, ordinarily, the probate of a will or the grant of letters of administration by a County or Probate Court in one state, does not involve the adjudication of the place of domicile of the testator or intestate, and therefore does not foreclose inquiry into the place of domicile in proceedings in other states. *Thorman v. Frame*, 176 U. S., 350; *Overby v. Gordon*, 177 U. S., 214.

In the first of these cases the bare appointment of an administrator in Louisiana by a Probate Court, without undertaking to adjudge the place of domicile at all, was held not to affect

that question in the State of Wisconsin; that as administration might be lawfully granted in Louisiana on *other* grounds than the local domicile of the deceased, the appointment did not even impliedly involve any finding as to the domicile; and hence that, irrespective of the jurisdiction of the Louisiana Probate Court over the question of domicile, its "bare appointment of an administrator" did not "foreclose inquiry as to the domicile of the deceased in the Courts of another state." And even this question, Mr. Chief Justice Fuller, delivering the opinion, declared was "a narrow one."

In the second of these cases, decided at the same term, it was held that the record of the appointment of an administrator by a Probate Court of Georgia of a deceased person as an intestate and reciting that he was domiciled in the State of Georgia, in a proceeding instituted *after* the propounding for probate of the will of the deceased and the making up of issues upon it and upon his domicile, in the District of Columbia, and to which latter proceeding the person procuring the appointment in Georgia was a party—was not admissible in evidence in the proceeding in the District of Columbia, as tending to show that the domicile was in Georgia and to estop the other party against maintaining the

contrary. This conclusion was based upon several considerations, and among them: (1) That the Georgia proceeding was not pleaded, nor set up as an estoppel otherwise than by being offered in evidence upon the trial; (2) that it was instituted and the appointment procured by a party to the contest in the District of Columbia, pending that contest, and with full knowledge of it; and (3) that by the laws of Georgia administration might be granted in that state on numerous grounds *other* than that of the local domicile of the deceased, and therefore the determination of the place of domicile was wholly *unnecessary* to the making of the appointment—the Court following and quoting extensively from the case of *Conchav. Concha*, 11 App. Cases 541, to the effect that in a case *quasi in rem* the decision of a point *not necessary* to the action taken will not be conclusive in another proceeding. The opinion is a lucid and instructive one, and will be referred to again on other points in this brief. But these two cases, relating as they do only to the effect of County or Probate Court appointments of administrators under the special circumstances shown, do not bear in any material sense upon the validity of the Chancery Court proceeding in question here. That, obviously, must be determined by other considerations which will be treated later on.

3. The authorities cited by adversaries also establish the proposition, not at all questioned by us, that the jurisdiction of the Court rendering a judgment or decree in any state may always be inquired into when that judgment or decree is relied upon in another state, and that if the jurisdiction be found wanting the judgment will be void. *Thompson v. Whitman*, 18 Wall., 457; *National Exchange Bank v. Wiley*, 195 U. S., 257. But this does not get us anywhere, for there is no dispute here upon any *jurisdictional fact*, but only the legal question whether the *conceded facts* gave jurisdiction to the Chancery Court of Tennessee to *decide the issue of fact* as to the *place of domicile* of Charles Baker, and, assuming such jurisdiction, whether the decision affects the status of the whole personal estate of Charles Baker or only that portion within the state. This is the question to be decided, and will be discussed when we come to present our side of the case. We are now only considering the points decided by the authorities cited by our adversaries.

4. That, ordinarily, a proceeding *in rem*, or *quasi in rem*, affects only the property proceeded against and in custody of the Court, or within its jurisdiction. *Pennoyer v. Neff*, 95 U. S., 714, and other cases cited in adversaries'

brief. This is undeniably true as to all admiralty, prize and other forfeiture cases where the property itself is proceeded against; all attachments of local property for debt; partition and foreclosure proceedings; title suits relating to specific real estate; and, it is conceded, it is also true of grants of letters of administration and letters testamentary, so far as they operate to confer authority to sue as representative—the authority to sue is limited to the territory of the state granting it, unless permission be given by other states to exercise it within their borders, which is often done. Moreover, as we shall show, this inability of a domiciliary administrator to sue in a foreign jurisdiction upon a chose in action of the deceased, does not result from any want or defect of *title*, but from a legal *incapacity to sue there*, in the absence of an enabling local statute. Such administrator, as the representative of the distributees, succeeds to the *title* of the *whole personal estate*, wherever situated, subject, of course, to the claims of creditors, and, with respect to chattels located in other states, subject to the right of such states to have them administered there and local creditors paid there.

And so, in this connection we state briefly—to be verified by the authorities later on—that

this fourth proposition is not and cannot be universally true as applied to *personal property*, affected in many respects, and notably in its ownership and transmission by succession, by the law of the owner's domicile, and, especially for the purpose of succession upon the death or dissolution of the owner, universally treated as a *unit*, with its legal *situs*, wherever actually situated, at the owner's domicile, whether such owner be a natural person, corporation, or trust.

5. And finally, the authorities cited by adversaries establish that a personal representative of a deceased person *cannot be sued*, in his representative capacity, outside the state or jurisdiction of his appointment. *Vaughn v. Northup*, 15 Peters, 1. But it is not perceived how this proposition can have any possible bearing on the question for decision here.

These are the several propositions and the only ones for which adversaries have cited authorities. That they do not meet the question presented for decision upon this writ of error we submit is quite obvious. They may all be granted, and still the question here presented will remain unsolved.

II.

TENNESSEE JUDGMENT AS TO DOMICILE VALID AND CONCLUSIVE AND AFFECTS THE WHOLE PERSONAL ESTATE OF CHARLES BAKER.

As introductory to our argument of this proposition, we quote the very pertinent remarks of Judge Freeman in a note to *Shinn's Estate*, 45 Am. St. Rep., 665:

“It is of frequent occurrence that persons die leaving large and valuable property interests in different states, and debts due them from persons in other states, and these occurrences are constantly increasing. State lines are becoming dimmer in this class of cases, and the questions arising therein are of great practical importance. Executors, administrators, and Courts of Probate must act respecting them, and the law should be clearly defined. Unfortunately this seems not to have been done, at least as to many of the questions growing out of this complicated subject. While an administrator or executor cannot sue in a foreign jurisdiction without clothing himself with the authority of ancillary administration, he must not disregard the interests of the estate, and must take timely and prudent measures to protect them, or run the risk of being charged for loss.”

The learned annotator is speaking of a *domiciliary* representative, and with respect to personal assets in *other* jurisdictions; and there is food for serious thought in his observations. Modern social, business and industrial conditions in this country necessarily require a *dimming* of state lines as to many subjects, and especially as to the settlement and distribution of estates; and it is eminently true that the applicable rules, on many points growing out of such cases, are not clearly defined.

Fundamental principles, however, when rightly applied and kept in view, will suffice to guide the Courts to sound and safe conclusions, if they will not suffer themselves to be unduly influenced, as we think the learned Court below was, by exaggerated views of "states lines" and of the supposed *segregation*, into separate and independent parts, of the personal *estates* of deceased persons because of their location.

Among these fundamental principles are the following:

A.

The personal estate of an intestate decedent is a *legal unit*, having its *legal situs* at the owner's domicile; the *title* to the *whole of it*, wherever situate, is vested in

the duly qualified domiciliary administrator, and *not* in the distributees; and its succession or distribution is governed by the *lex domicilii* of the deceased owner.

In *Wilkins v. Ellett, Admr.*, 9 Wall., 740, holding valid the payment of a debt at Memphis, Tennessee, by a Tennessee debtor, to a foreign *domiciliary* administrator appointed in Alabama, as against the demand of an ancillary or local administrator subsequently appointed in Tennessee at the domicile of the debtor (there being no debts owing by the intestate in Tennessee), this Court said:

“It has long been settled, and is a principle of universal jurisprudence in all civilized nations, that the personal estate of the deceased is to be regarded, for the purpose of succession and distribution, wherever situated, as having *no other locality than that of his domicile*; and, if he dies intestate, the succession is governed by the law of the place where he was domiciled at the time of his decease, and not by the conflicting laws of the various places where the property happened at the time to be situated. The original administrator, therefore, with letters taken out at the place of the domicile, *is invested with the title to all the personal property of the deceased* for the purpose of collecting the effects of the estate, paying the debts, and making dis-

tribution of the residue, according to the law of the place, or directions of the will, as the case may be.

It is true, if any portion of the estate is situated in another country, he cannot recover possession *by suit* without taking out letters of administration from the proper tribunal in that country, as the original letters can confer upon him no extra-territorial *authority*. The difficulty does not lie in any *defect of title to the possession*, but in a limitation or qualification of the general principles in respect to personal property by the comity of nations, founded upon the policy of the foreign country to protect the interests of its *home creditors*. These letters are regarded as merely ancillary to the original letters, as to the collection and distribution of the effects; and generally are simply made subservient to the claims of the *domestic creditors*, the *residuum* being transmitted to the Probate Court of the country of the domicile, for the final settlement of the estate. It is upon this qualification of the law of comity and consequent inability of the original administrator *to sue in the foreign country*, upon which the objection is founded to the validity of the voluntary payment by the foreign debtor to him.

There is doubtless some plausibility in it growing out of the interests of the *home creditors*. But it has not been regarded of sufficient weight to carry with it the judicial

mind of the country. With the exception of the case in the State of Tennessee, none have been referred to, nor have our own researches found any, maintaining the invalidity of the payment. The question has been directly and indirectly before several of the Courts of the states, and the opinions have all been in one direction—in favor of the validity.” (Italics ours.)

And when a case of the same style and between the same parties was before this Court some fourteen years later, reported in 108 U. S., 256, the Court said:

“There is no doubt that the succession to the personal estate of a deceased person is governed by the law of his domicile at the time of his death; that the proper place for the principal administration of his estate is that domicile; that administration may also be taken out in any place in which he leaves personal property; and that no suit for the recovery of a debt due him at the time of his death can be brought by an administrator *as such* in any state in which he has not taken out administration.

But the reason for this last rule is the protection of the rights of the citizens of the state in which the suit is brought; and the objection *does not rest upon any defect of the administrator's title in the property*, but upon his *personal incapacity to sue as administrator* beyond the jurisdiction which appointed him.” (Italics ours.)

In this second case, it was sought to show that the domicile of the deceased creditor was in Tennessee and not in Alabama—there having been no formal adjudication of the place of the domicile; but the Court held that point immaterial, inasmuch as no question of distribution was involved, and it appeared that at the time of the payment there was neither any administration nor any creditor or distributee in Tennessee where the payment was made.

Both these cases are full authority for the proposition that a domiciliary administrator of an estate *takes title* to the *entire personal estate of the deceased*, wherever it may be situated; that it is to be regarded as a unit, located at the domicile of the deceased; and that its succession or distribution is governed by the *lex domicilii* of the deceased. They have been cited with approval and followed repeatedly by this Court and the State Courts, and the general authorities in this country, too numerous and familiar to require citation, are in accord with them.

And so is the law of England, 1 Williams on Exrs. (6th Am. Ed.), 650:

“The general rule is, that all goods and chattels . . . go to the executor or administrator. By the laws of this realm, says

Swinburne, as the heir hath not to deal with the goods and chattels of the deceased, no more hath the executor to do with the lands, tenements and hereditaments. In other words, it may be stated, that, both at law and equity, the *whole personal estate* of the deceased *vests in the executor or administrator.*”

Id., Vol. 2, p. 1526:

“The rule is, that the distribution of the personal estate of an intestate is to be regulated by the law of the country in which he was a domiciled inhabitant at the time of his death without any regard whatsoever to the place either of the birth or death, or the situation of the property at that time . . . for the *lex loci rei sitae* is not to be recognized.”

And this rule is there applied in the administration and imposition of succession and other taxes or duties. To quote Sir Edward Williams again, Vol. 3, p. 1642:

“That personal property follows the person and is to be considered as *situate wherever the domicile of the proprietor is*; and consequently, that if the deceased, whether a British subject or a foreigner, died domiciled in England, all his personal estate, wherever situate, is to be regarded as English estate, and therefore liable (to the

duty). But if he died domiciled out of England, then the whole of his personal property, wherever it happened to be at the time of his death, is to be regarded as *situate in the country of domicile*, and therefore exempt."

Thompson v. The Advocate General, 12 Clark & Fin., 1, fully sustains this text.

From the fact that the title to all the personal estate *vests in the domiciliary administrator* when qualified, it necessarily follows that it *does not vest in the distributees*. They take no title, until distribution is ordered, or the right to distribution is accrued; and it is well settled that they can maintain no action or suit to recover their shares until after administration and the payment of debts and an order or decree for distribution is made or is due to be made—this being necessary to the transmission of title to them. *White v. Ray*, 4 Iredell Law, 14; *Davidson v. Potts*, 7 Ired. Eq., 279; *Carter v. Greenwood*, 5 Jones Eq. (N. C.), 410; *Sharp v. Farmer*, 4 Dev. & Bat. Law, 122; *Alexander v. Banfield*, 6 Tex., 400; *Miller v. Eastman*, 11 Ala., 609; *Cochran v. Thompson*, 18 Tex., 652; *Downer v. Downer*, 9 Penn. St., 302; *Kellar v. Butler*, 5 T. B. Monr. (Ky.), 574; *Wilkinson v. Perrin*, 7 T. B. Monr., 217; *Jenkins v. Freyer*, 4 Paige, 51; *Weeks v. Jewett*, 45 N. H., 540; *Tappan v.*

Tappan, 30 N. H., 50; *Woodin v. Bagley*, 13 Wend., 453; *Bucher v. Crouse*, 19 Wend., 306; *Lawrence v. Wright*, 23 Pick., 128; *Marshall v. King*, 24 Miss., 85; *Allen v. Simons*, 1 Curtis, 124.

The “estate” of a decedent, it is true, is neither a person nor a corporation, and has no capacity to sue or be sued, as such. It consists of property and property rights, title to which is vested in someone whom the law can recognize as its owner and representative. The relations existing between a domiciliary administrator and the intestate’s personal estate and distributees are very closely analogous to those which exist between a corporation and its property and stockholders—in fact, save and except the stockholders’ ultimate right of control through the election of directors, not possessed by distributees, these relations are practically identical. The corporation *owns* the property—is vested with the *title*, but holds it and is bound to manage it for the benefit and in the interest of the stockholders; the administrator *owns* the property—is vested with the *title*, but holds it and is bound to manage it for the benefit and in the interest of the distributees. The stockholder has *no title* to the corporate property, and can maintain no action for its possession or for injuries to it; neither has

the distributee any title to the personal property of the intestate—the estate—nor can he maintain any action for its possession or for injuries to it. The stockholder is entitled to his ratable share of the *residuum* of the corporate property after payment of debts and expenses, upon liquidation—his *title* then accrues, and not before; so, likewise, is the distributee entitled to his ratable share of the *residuum* of the intestate personal estate after payment of debts and expenses, upon liquidation by the administrator—his *title* then accrues, and not before. In both cases, the *personal* property, at all events for the purpose of distribution, is legally regarded as a *unit*, and as *located at the domicile* of the corporation or intestate, by the laws of which its distribution is governed; and in both cases, debts and legitimate expenses and taxes are preferred, and the shares of the beneficiaries are undeterminable until these are ascertained and paid.

And so, these relations may be fairly likened to those which exist between a trustee of personal property, invested with the title and possession, and the trust estate and ultimate beneficiaries. They will be found by analysis to be very similar, if not identical, at all points.

In all these cases, *state lines* are of little consequence. They have been so far *dimmed* by the

demands of modern civilization as to have become negligible, if indeed they were ever of potency on these questions. The system of rules and principles declared by these authorities is logical and consistent. It conserves harmony among the several states and encourages the utmost freedom among their citizens to trade and acquire and own property and conduct industries and enterprises wherever wish or interest may lead them, without regard to state lines and with assured confidence that however suddenly and unexpectedly death may overtake them, their property will go according to the laws of their homes.

Of course these rules and principles do not relate to or control *procedure*. They affect *right and title*. Nor do they impinge upon any just right of a state over property, of any kind, within its borders, for the protection of its own citizens and the support of its own government. It may tax it, wherever its owner resides. It may authorize proceedings against it for debt. It may authorize its appropriation, upon due compensation, for public use. It may forbid its removal until all claims of its citizens upon it or its owner are satisfied. It may grant administration upon it, and make its location the test of the place of administration within its borders, or of the place of its assessment for taxes.

But it cannot, we think, impair or destroy the *right and title* of the owner, domiciled in another state, nor that of his personal representative; nor can it destroy or segregate the *unity* of such personal property with the other similar property of the owner domiciled in another state, and make two or more “estates” of one, nor control its succession or distribution among the next of kin of the owner. At all events, the State of Kentucky has not undertaken by any statute to do any of these things.

These conclusions, we submit, necessarily follow from the authorities we have cited, and which are the underlying foundation for further contentions we make upon the immediate question involved.

B.

DOMICILIARY AND ANCILLARY ADMINISTRATIONS DISTINGUISHED.

We feel justified in emphasizing this distinction, although it has been substantially stated in the quotation from *Wilkins v. Ellett*, 9 Wall., 740. It is clearly and tersely stated by the authors of Cyc., Vol. 18, p. 1228, as follows:

“The title of a domiciliary representative differs from that of an ancillary represent-

ative in that it extends to *all of the descendant's personal estate wherever situated*, while that of the ancillary representative is limited strictly to the assets within the jurisdiction of his appointment."

And they immediately add:

"This title, however, is not commensurate with that of the owner while living. It will not authorize the representative *to sue outside the jurisdiction of his appointment*, or to interfere in any way with an ancillary administration; but where there is no *local* administration, it is a title which other jurisdictions will recognize through comity, which debtors of the estate in other jurisdictions may recognize and will be protected in recognizing, and which will give validity to many acts of administration in other jurisdictions which can be performed *without recourse to the Courts*."

And on page 1229:

"Letters of administration extend only to the assets in the jurisdiction where the letters are granted, and do not confer as a matter of right any authority to collect assets in another. But since a foreign domiciliary representative *has a title* to the assets wherever situated which may be recognized in the absence of local creditors or a local administration, he may under such circum-

stances take possession of the property of the estate if he can do so peaceably and *without suit*, and his possession will be recognized as *rightful* and protected as *fully as if he had taken out local letters of administration.*”

And on page 1231 :

“So, also, although a foreign representative cannot himself sue on a chose in action of his decedent, his disability is a personal *incapacity* and *not a defect of title*, and he may *assign a chose in action so that the assignee may sue thereon in his own name*, provided the statutes of the state where the action is brought permit the assignee of a chose in action to sue in his own name.

“A domiciliary representative may *assign shares of stock in a foreign corporation belonging to the estate, and no local grant of administration is necessary to compel a transfer on the books of the corporation.*”

And for these texts they cite cases from this Court, from Canada, and from the States of Alabama, California, Illinois, Minnesota, Mississippi, New Hampshire, New York, North Carolina, Rhode Island, South Carolina, Texas, and Utah.

To the same effect is the A. and E. Enc. Law (2d Ed.), Vol. 13, pp. 931-934, citing numerous

cases. In fact, there is no doubt, and, as we understand, no controversy in this case, upon the point.

And as has been seen from the opinion in *Wilkins v. Ellett*, the title of the ancillary or local administrator, in a state other than that of the intestate's domicile, is limited to the purposes of administration only, that is, collection or liquidation of the assets and the payment of debts, and does not extend to the purpose of *distribution of the residuum*—that is to be transmitted to the Court of the domicile, or the domiciliary administrator. *Wilkins v. Ellett*, 9 Wall., 740; *Hays v. Pratt*, 147 U. S., 557.

Of course, it is to be constantly borne in mind that our argument is limited to the *personal* property of the deceased. Real estate, it is conceded, is governed by the *lex loci rei sitae*, in *all* respects, both as to its acquisition, ownership and transmission by the owner in his lifetime and by will, and as to its succession by descent in case of intestacy. As well say the authors of Encyclopedia of U. S. Sup. Court Reports, Vol. 3, 1035, 1036, citing very numerous decisions of this Court, "It is an acknowledged principle of law, that the title and disposition of real property is exclusively subject to the laws of the country where it is situated. It is a principle

firmly established that the law of the state in which the land is situated must be looked to for the rules which govern its descent, alienation and transfer, and for the effect and construction of wills and other conveyances." And they equally well state the rule that *mobila siquuntur personam* in same volume at page 1038. No question with regard to real estate is presented in this case, and these observations are made simply to emphasize the fact that we are discussing *personal* property only, and to avoid any possible misapprehension of our argument, especially by our adversaries who seem not always to be mindful of necessary and proper distinctions.

Now with these fundamental principles in mind, and before discussing the direct question whether the Chancery Court of Hardin County, Tennessee, had jurisdiction to decide and did finally and effectually decide the place of domicile of Charles Baker, it may be well to recur for a moment to the "Points and Authorities" and "Argument" of the Defendants in Error and movers of these motions, and thus demonstrate that they leave the real question involved still "up in the air"—to quote a provincialism.

They submit two "Points," with citation of authorities appended. (Brief, pp. 12, 13.)

The first is, in substance, that a *County Court* judgment *appointing an administrator* in one state has no probative force in a contest over the question of the *domicile of the deceased* in another state.

None of the authorities cited under this "Point" bear directly upon it except the two cases of *Overby v. Gordon* and *Thorman v. Frame*, from 176 and 177 U. S., already noticed; but the controlling question here is not the force and effect of an order of a *County Court appointing an administrator*, upon the question of the place of domicile of the deceased, and all that is claimed under this point and all that is decided by the authorities cited for it may be granted, and still we are no nearer a solution of the real question than before. The points decided by the two cases in this Court, in 176 and 177 U. S., as already suggested, are, (1) that the *bare appointment* of an administrator in one state does not preclude inquiry into the domicile of the deceased in another state, and (2) that a recital of the place of domicile of the deceased in an appointment of an administrator by a Probate Court in one state, where domicile is not necessary to the validity of the appointment, is not evidence of domicile in a contest over the question of domicile in another state.

These propositions need not be questioned here, nor are they at all inconsistent with the validity of the *formal adjudication of domicile* by the Chancery Court of Tennessee in the condition and circumstances shown in this case. So this first "Point" of adversaries is not in the way.

The second "Point" is, in substance, that a judgment in one state is always impeachable for *want of jurisdiction* when set up and relied on in another state—which is no more than a familiar judicial axiom everywhere recognized.

It is notably significant that *every case cited* under this "Point" (except two, which we shall specially discuss) is upon a judgment *in personam*—a specific *recovery of money, with award of execution*, without personal service of process or appearance. So far as we are advised, such judgments are everywhere treated as void. Our learned adversaries apparently ignore the distinction between such judgments and those of the character involved here—a distinction which we shall show is substantial and vital.

The two cases excepted from this category are *Thompson v. Whitman*, 18 Wall., 385, and *Grannis v. Ordean*, 234 U. S., 385.

In the first case, there was brought into question a judgment of the State of New Jersey for-

feiting a New York vessel for raking oysters in violation of a statute of New Jersey, which authorized seizure of the vessel *in the county where the offense was committed*: Held, that seizure *in the county* was essential to the jurisdiction, and that in a suit upon the judgment in New York, the want of jurisdiction might be shown by alleging and proving that the seizure was not made *in the county of the offense*.

In the second case, there was involved the question whether a judgment in partition was binding upon a non-resident lienor made a party by publication under the name of "Guilfuss," when the true name was "Geilfuss"—the contention being that this was a fatal variance and the judgment without due process of law and void; and the trial Court so held, but this Court held the contrary, and that the proceeding was valid.

It is clear, we think, that these cases, cited by adversaries under their second "Point," do not, any of them, touch the real question for decision in the instant case.

And when we come to the "Arguments" contained in the brief, we find they are subject to the same infirmity.

For the most part the argument (pp. 14-22) is devoted to the *County* Court judgment, ap-

pointing the administratrix, and consists entirely of quotations from the two cases cited from 176 and 177 U. S., and short extracts from *Vaughn v. Northup*, 15 Pet., Story's Conflict of Laws, Freeman on Judgments, 18th Cyc., and four Kentucky cases—all concerning the universally admitted proposition that a Probate Court can confer *no extra-territorial authority* upon an administrator appointed by it.

For examples: From *Vaughn v. Northup*, 15 Pet., 1—

“Every grant of administration is strictly confined in its authority and operation to the limits of the territory of the government granting it,” etc.

From Story's Conflict of Laws, Sec. 514—

“For it is exceedingly clear that the probate grant of letters testamentary, or of letters of administration, in one country, give authority to collect the assets of the testator only in that country, and do not extend to the collection of assets in foreign countries,” etc.

From 18 Cyc., 1221—

“A well settled principle of the common law (is) that letters of administration have no extra-territorial force and confer no authority upon the representative to adminis-

ter upon property outside of the state or country of his appointment.”

From 1 Freem. on Judgments, Sec. 120—

“So if a Probate Court should make an order for the sale of property situate in another state than the one in which the order is made, this would also be an assumption of authority over a subject-matter not within the jurisdiction of the Court, and would be void,” etc.

From *Fletcher v. Sanders*, 7 Dana (Ky.), 223—

“A well settled doctrine (is) that letters of administration granted by one nation or state, can have no operation *per se*, within the jurisdiction of another nation or state,” etc.

The other Kentucky cases—10 Bush, 263; 87 Ky., 1; and 91 Ky., 36—are simply to the point that, in Kentucky, the proceedings of the County Courts in matters of administration are not conclusive, though undeniably the rule is otherwise in Tennessee: *Brien v. Hart*, 6 Humph., 133; *Wilson v. Frazier*, 2 Humph., 30; *Railway v. Mahoney*, 89 Tenn., 311.

Obviously these propositions and authorities do not even tend to foreclose us on the real question in hand.

The "Argument" on the Chancery Court judgment is quite brief (pp. 22-27), and consists of further extracts from the same and some other similar cases, not one of which either involves in its facts or undertakes to consider the question for decision here. Let us demonstrate this observation by a brief reference to all the authorities cited in this branch of the "Argument."

From *Old Wayne Life Assn. v. McDonough*, 204 U. S., 8, involving a straight personal judgment for money and nothing else, the brief quotes, first, a general statement to the effect that the faith and credit clause of the Constitution does not extend to judgments rendered *without jurisdiction*, and then the following:

"A judgment rendered by a State Court in an action *in personam* against a non-resident, served by publication of summons, but upon whom no personal service of process within the state was made and who did not appear to the action, was devoid of any validity either within or without the territory of the state in which the judgment was rendered."

From *Nat. Exch. Bank v. Wiley*, 195 U. S., 257, also involving a purely personal judgment for money, the "Argument" quotes:

"It is thoroughly settled that a *personal judgment* against one not before the Court

by actual service of process, or who did not appear in person or by an authorized attorney, would be invalid as not being in conformity with due process of law," etc.

The judgment had been rendered on a note by confession of a person assuming to act as attorney of the makers under a power of attorney or warrant of authority contained in the note; and the Court, holding that this power was limited to a confession of judgment in favor of the original "holder" or payee of the note, and did not extend to a purchaser or assignee or endorsee of the note, permitted the fact to be shown that at the date of the judgment the plaintiff, the original holder, was *not*, but another *was*, the owner of the note, and held, consequently, that the judgment was *coram non judice* and void. The case is identical in principle with *Thompson v. Whitman*, 18 Wall., 457, and numerous other cases and authorities holding that the *jurisdiction* of the Court rendering judgment in one state may always be inquired into in another state—a proposition we do not question. The brief cites the 18 Wall. case, and 11 How., 165; Wharton's Conflict of Laws, Secs. 32 and 654; Story's Conflict of Laws, Sec. 539, 540; and 137 U. S., 287, all to the same point.

And from the same Kentucky cases already noted, viz.: 7 Dana; 3 J. J. Marsh.; 3 Ky.; 8 B.

Monr.; and 6 J. J. Marsh., extracts are made in the “Argument” on the Tennessee Chancery Court proceedings to the same purport already stated—and that is all of it.

At the conclusion, after a brief extract from *Fletcher v. Sanders*, 7 Dana (Ky.), 344, stating that “movable property *has no situs* because it is deemed personal and therefore subject to the law of the owner’s domicile in every respect (except for the purpose of administration), and therefore, should be distributed according to the law of his domicile”—the “Argument” very truly and properly observes:

“ . . . so that, to determine the devolution of the personal property of Charles Baker, *it was necessary to judicially determine his domicile.*”

But it finally adds this most patent *non sequitur*:

“This, the Tennessee Court was without power to do, *because it had no jurisdiction of the person of the Defendants in Error.*”

It is, we respectfully submit and shall endeavor to show, no less than absurd to say that no Court can validly and conclusively determine the *domicile* of a deceased person until it has before it by personal service or voluntary ap-

pearance *every person who by the laws of any other state or foreign country might have an interest as distributee*—and this is what the “Argument” of adversaries means.

The theory they pressed in the Court below on this point was, that the existence of the local domicile, *at the place of the forum*, was the *essential jurisdictional fact* which *alone* could confer upon the Court jurisdiction to decide *where the domicile was*; and hence, they argued, that the *place of domicile was always an open question* (as it was jurisdictional), and that the domicile being shown by *aliunde* proof *not* to have been *at the place of the forum* deciding its location in any case, the judgment of the Court adjudging its place was *without jurisdiction* and void *for all purposes*.

Of course, under such a theory, there could never be any final *adjudication* of the place of domicile at all, where the persons interested were in several different jurisdictions; for a second Court would be free to declare it at a different place from that declared by the first; a third, to declare it at a different place from those declared by the first and second, and so on *ad infinitum*. Such a conclusion could not be tolerated, and, of course, is not law.

II.

ARGUMENT IN SUPPORT OF TENNESSEE CHANCERY ADJUDICATION OF DOMICILE.

We come now to present, more directly, our side of the case.

We present an adjudication of the domicile of a deceased intestate who died in Tennessee, by a superior Court of general jurisdiction in that state, upon full hearing and proof, in a proceeding instituted by his widow—a distributee by the laws of both Tennessee and Kentucky—and the lawfully appointed administratrix, charged with the duty of *distributing* as well as administering the estate, in the state of the intestate's birth, marriage, death and burial, and wherein are located all his real estate and a substantial part of his personal estate, for the purpose, among others, of having the place of domicile of the intestate determined, and the right of succession declared; and to that proceeding the only other person having any possible interest in the question of domicile—the mother of the deceased—residing in the State of Kentucky, is made a defendant and brought before the Court by publication in conformity with the laws of the forum applicable to such cases, the averments of the bill are put in issue by the statute

of the state, proof is taken upon the notice prescribed by the statute, and the adjudication is made regularly and formally, in full accordance with the laws of the state. The record of this judgment, duly authenticated, is presented to a Court of Kentucky, which is asked to proceed in recognition of the adjudicated fact that the intestate died domiciled in Tennessee.

The Kentucky Court recognizes that the Chancery Court proceeding in Tennessee was regular and in accordance with its laws; that the Court had jurisdiction of the subject-matter and the parties; that the question of the place of domicile of the intestate at the date of his death was a proper and legitimate issue in that case, of which issue the Court had jurisdiction; and that its decision of that issue was *coram judice*, and binding and conclusive upon all persons, everywhere—but, because the mother would be a distributee if the intestate was domiciled in Kentucky, and she was not personally served with process and did not enter her appearance, and because all the intestate's personal property was not physically located in Tennessee, that Court held that the Tennessee judgment *affected only the property physically located in Tennessee*, and left the question of domicile open and untrammelled in other states where fragments of the personal estate might be.

To state the position of the Kentucky Court of Appeals somewhat more fully, and to show the results to which it leads, is a fair way, we think, to develop its unsoundness. It holds, as will appear from its full opinion, printed record, pp. 84-103:

1. That the Plaintiff in Error, the widow, was duly and validly appointed administratrix of Charles Baker, her husband, by the County Court of Hardin County, Tennessee;

2. That Charles Baker was born, raised, married and died in Tennessee, and that all of his real estate and a substantial part of his personal estate were located in Hardin County, Tennessee;

3. That the Plaintiff in Error, both as administratrix and distributee of her husband, filed the bill in the Chancery Court of Hardin County, Tennessee, for the legitimate and proper purposes of obtaining dower and administering the estate of her husband, and, as incidental thereto, of having the place of domicile of the deceased determined and the succession declared.

4. That said Chancery Court had full jurisdiction of such a proceeding and the issues presented by it, including the issue as to the place

of domicile of Charles Baker at the time of his death, and that all persons having any possible interest were made parties;

5. That all proceedings therein were regular and in conformity with the laws of the state and practice of the Court, including publication for the mother of Charles Baker and proceedings thereon;

6. That evidence was taken and submitted to the Court showing that Charles Baker was domiciled in Tennessee at the time of his death and had been all his life;

7. That said Court so adjudged and decreed, and thereupon declared the widow entitled as sole distributee to all the personal estate of her husband, wherever situated, including the certificates of stock held by him in the Kentucky corporation which were in her possession and exhibited to the Court;

8. That this was a lawful adjudication of the domicile of Charles Baker, and binding upon all persons, including the non-resident mother, *as to all personal property of Charles Baker in Tennessee*; but

9. That such adjudication *did not affect any part of the personal estate of Charles Baker lo-*

cated outside of Tennessee, and that the stock in the Kentucky corporation, notwithstanding the fact that the certificates were in the manual possession of the administratrix and directly awarded to her by the Court, was to be treated as *located* in Kentucky and unaffected by the judgment.

Now we think, and respectfully submit, that the limitation upon the scope and effect of the adjudication, imposed by the Kentucky Court, involves a confusion and misapplication of the fundamental principles to which we have called attention, and leads to results so startling as to render such a conclusion intolerable as a fixed rule of law.

In the first place, we think the Court has confused the rule applicable to a mere *grant of administration by a Probate Court*, with that which is applicable to a Court of general jurisdiction when dealing with the *distribution* of the estate of an intestate decedent, or other trust.

In the second place, it has wholly overlooked or ignored the rule so vigorously declared by this Court in *Wilkins v. Ellett*, 9 Wall., 740, that "the personal estate of the deceased is to be regarded, for the purpose of succession and distribution, wherever situated, as having no other location than that of his domicile," and has un-

dertaken really, contrary to this rule, to segregate and separate the personal "estate" of the deceased into as many distinct and independent "estates" as there may be found *fragments of it* physically situate in different states, with separate and different *rules of distribution* for each.

And in the third place, it has, we think, undertaken to substitute for the logical, consistent, and homogeneous system of law relating to the personal estates of intestates and their succession, one which is illogical, inconsistent, and literally bristles with possible absurd and intolerable consequences; in other words, it has overlooked the absolute necessity for an authoritative and final determination of the domicile of a deceased intestate even where, in many cases, all the persons having possible interests in the question, can never be brought by personal service before the same Court or tribunal. This necessity we shall presently demonstrate.

Now as to the first of these suggestions: It is very true that a Probate Court, by the appointment of an administrator, whether domiciliary or ancillary, can confer upon him authority as such representative only within the state of the appointment—it cannot effectively authorize him to *exercise his office* in another state.

This is declared by the same eminent authorities which emphasize the *title* of the domiciliary administrator to *all* the personal estate and its legal unity and location at the place of the domicile, wherever, for other purposes such as local administration or taxation, it may be situated; and this rule of title and constructive location is everywhere recognized as entirely consistent with the limitation of the *authority* of an administrator, as such, to the state of his appointment. His disability to sue or be sued in another state results, as we have seen, not from any *want of title*, but from *personal incapacity* to assert and exercise his office there. *Wilkins v. Ellett*, 9 Wall., 740; 108 U. S., 256. If the case were a contest over the *right to administer* the assets in the two states, then unquestionably the appointee in each state would have not merely the superior, but the exclusive, right in the state of his appointment and no right at all in the other state, and the *appointment* by the Probate Court in either state would have no effect whatever, as to the *right of administration*, upon personal property of the intestate in the other. But this is not such a contest, nor is the right of any creditor involved.

As to the second and third suggestions: The virtual segregation, by the Kentucky Court, of the "estate" of the intestate into as many dis-

trict parts as it may have fragments located in different states, with the application to these several parts of as many different bases and "rules of distribution" as the laws of such different states may respectively prescribe, with no possible means, in many cases, of preserving the unity of the whole estate and uniformity in its distribution among all the distributees—resulting from the manifest *impossibility*, in an increasingly numerous class of cases, of ever obtaining a *final and conclusive* adjudication of the *domicile of the intestate*—is not only in contravention of the fundamental principles of law on the subject, but, it seems to us, leads to interminable and insufferable confusion.

Let us make our meaning clear on this point.

Take the ruling of the Kentucky Court, which we have quoted, and apply it to a similar case of more extended and complicated scope in its facts. That Court says the Tennessee judgment as to the domicile of Charles Baker is binding on all persons, including non-residents of that state not personally served and not appearing, and *finally fixes such domicile in that state*, as to all his personal property *located within that state*, but that it leaves the question of his domicile open and at large in *Kentucky as to all property of the intestate located in Kentucky*.

This is the fundamental ruling upon which the whole decision is based; and, of course, this is conceived and in effect declared by the Court to be the rule applicable no matter in how many states the property may be located, or in how many states the possible distributees may reside, or how diverse may be the laws of distribution in such several states.

In the present case it happens that only *two* states are involved, and as the result of the decision we have *two* domiciles of Charles Baker, one in each state, conclusively established, with the consequence that *one part* of his "estate" is distributable according to the law of *one domicile* and *another part* according to the law of *another domicile*. And under the theory of the decision, there is no possible escape from this anomalous condition—the splitting of the "estate" into *two* separate and distinct *estates*, and the subjection of it to *two* divergent *laws of distribution*.

Now to make this incongruous anomaly even more glaring let us suppose the death, intestate, of a wealthy man about whose last domicile there is some doubt. He leaves no children or their descendants, but does leave a widow, a father, and numerous collateral kindred in various degrees of relationship, by both the whole- and the half-blood, residing, say, in a dozen different

states, in each of which some substantial part of his large personal estate is located, and in each of which the law of distribution is different from that of all the others.

In such a case, "to determine the devolution of the personal property" of the deceased, to quote from the brief of our adversaries, it is "*necessary to judicially determine his domicile.*"

But how is it possible to "judicially determine" that domicile, under the theory of the Kentucky Court of Appeals? Assuming a lawful grant of administration in each state wherein part of the personal estate is located and some of the possible distributees reside, how is any one of these administrators who may claim to be the domiciliary representative—or whether he so claims or not—how is any one of them, or any of the claimants of shares in the whole estate, ever to have the *place of the intestate's domicile* settled authoritatively and the lawful distributees ascertained? It might be that the claimants residing in each state would be distributees by the laws of their state, but not distributees at all by the laws of any of the other states.

Undoubtedly, if the domicile of the intestate at the time of his death can be judicially ascer-

tained, its laws will control the distribution and point out the distributees who take *the whole property*, wherever it may be situate; and certainly the enlightened jurisprudence of the present day must afford *some means* for the solution of so important a problem.

But how can it be done under the theory of the Kentucky Court of Appeals in this case? We answer: It is utterly impossible.

That learned Court itself undertakes to answer this question; but does it? It says:

“Our answer is, that the Courts of each state in which *the estate* has a situs at the time of the death of the deceased *have jurisdiction*, in a suit brought for that purpose, and in which all of the interested parties are brought before the Court by constructive service of process, *to determine between them* their respective rights *to the property situated within the state*. And if one or more valid domestic judgments are thus rendered, the force of these judgments is to be confined within the jurisdiction of the Court rendering the judgment, *the order in which the judgments were rendered not being controlling, the last judgment being equally as effective as the first and the first of no more force than the last.*” (Pr. Rec., 97, 98. The Italics are ours.)

This is no answer at all, but, aside from being a confusion of ideas regarding "heirs" and distributees, and the "estate" and mere fragments thereof, is a confirmation of our point, that under the theory of that Court it is *impossible* in any case where the personal estate and claimants or distributees are scattered through several states having different laws of distribution, ever to *judicially determine the domicile*, so as to fix the rule of distribution for the whole estate.

In the case which we have supposed, how does the theory of the Kentucky Court of Appeals work? Let us suppose that—

1. In state A, where the death occurred and the widow resides, administration is granted and the administrator, having liquidated the assets and paid the debts, files his bill in a Court of competent jurisdiction to have the domicile of the deceased determined and the lawful distributees ascertained, making parties all next of kin of the deceased, including the widow who is either made defendant or joined as complainant, the non-residents being brought in by such publication or notice as the laws of the forum prescribe in such cases. The Court, upon full evidence, determines the domicile to be in state A, and there is no appeal or vacation of this judg-

ment. By the law of the *domicile thus ascertained*, the widow takes the *whole estate* to the exclusion of all collateral kindred.

(2) Subsequently, in state B, where a half-brother resides, a similar administration is granted and similar proceedings are had by the local administrator and half-brother, the widow and all other kindred being brought in by constructive service. That Court determines the domicile to be in state B, and there is no appeal or vacation of this judgment. By the law of the *domicile thus ascertained*, the half-brother takes the *whole estate* to the exclusion of the widow and all other kindred.

(3) Next, in state C, where a nephew of the whole-blood resides, a similar administration is granted and a similar course is taken, with the result that the domicile is there determined to be in state C, and there is no appeal or vacation of this judgment. By the law of the *domicile thus ascertained*, the nephew takes the *whole estate* to the exclusion of the widow, half-brother, and all other kindred.

(4) Next, in state D, where the father resides, a similar administration is granted and a similar course taken, with the result that the domicile is there determined to be in state D, and there is no appeal or vacation of this judgment.

By the law of the *domicile thus ascertained*, the father takes the *whole estate* to the exclusion of the widow, the half-brother, the nephew, and all other kindred.

And so on, to the end of the list of states and claimants resident in them, the *judicial determination* in each of the dozen states being that the *domicile* is in that particular state.

Now the Kentucky Court of Appeals in effect holds that all these judgments would be equally valid, and that each would conclusively establish the *domicile* of the intestate to be where it adjudges it to be, and control the distribution of the personal estate located *within that state*. And, moreover, it holds that each claimant under one judgment would be powerless to resist the claims of the other claimants under the other judgments.

The result, it is thus seen, is the establishment of a *dozen different domiciles* of a single decedent, in as many different states, and a splitting up of the "estate" into that number of different estates with as many different *leges domicilii* controlling distribution.

It is thus also seen that under this theory, in the case supposed and in very many which are much less complicated, it would be utterly *impos-*

sible to procure a *judicial determination of domicile* that would fix the basis of distribution of the *whole estate* and be binding on all the distributees. This would never be possible, under such a theory, unless *all* the personal property of the intestate was physically *within a single state*, or, possibly (and even this is inferentially negated by the opinion of the Kentucky Court), unless *all the possible distributees* are before the Court by personal service or voluntary appearance—a thing utterly incapable of accomplishment by any known means in a very large class of cases.

What, then, are the real infirmities of this theory of the Kentucky Court of Appeals? And what is the alternative, to avoid, consistently with the fundamental rules and principles of law, the startling consequences to which that theory leads?

The infirmities, we respectfully submit, are these: (1) An inadequate conception of the nature and character of a proceeding in a Court of competent jurisdiction to determine the domicile of a decedent, and of the essentials of jurisdiction in such a case; (2) a failure to perceive the real *subject-matter* of such a proceeding; (3) a too narrow application to it of the law of proceedings *in rem*; (4) failure to recognize the

unity, the legal *oneness*, of an intestate decedent's personal estate, and the operation of the law of his domicile upon it and its distribution; and (5) failure to recognize the *necessity*, in this age, of some forum competent to *determine domicile* in such cases, and settle it, once and for all.

The alternative theory, which we think the correct one and consistent with all the fundamental rules and principles of law and justice, and which produces no startling results, and, moreover, which we think is demanded by the conditions of modern society, is in brief this:

That any superior Court having cognizance of suits by administrators and distributees *for the settlement and distribution of estates*, sitting in a state where an administrator has been *lawfully appointed*, where a *substantial part of the personal property of the deceased is physically located*, and where *some of the claimants as distributees reside*, where the administrator and resident distributees are before the Court by personal appearance or service, and all others possibly interested in the question of the domicile of the deceased are brought before the Court by reasonable *constructive notice*, such as the state prescribes for necessary parties to such controversies who *cannot be personally served*—has jurisdiction to *determine the domicile* and

fix the basis of distribution, and by such judgment bind all parties to the suit, notwithstanding some of them have not been personally served with process nor entered appearance.

If this be not so, and if it be necessary to the full validity of a judgment determining the domicile of a decedent, either that the *whole of his personal estate* must be *physically within the state of the forum*, or all persons having possible interests in the question must be before the Court *on personal service or voluntary appearance*, then, most obviously, the firmly established and universally recognized rule of law that the *lex domicilii* of an intestate decedent controls the distribution of his personal estate, which for that purpose is to be regarded as situated at the place of his domicile and nowhere else, must stand as a mere empty abstraction incapable of enforcement in many very important cases. For manifestly in an increasingly large number of such cases, the personal property of the decedent is *not* all physically located in any single state, and all those having possible interests cannot possibly be brought by personal service before any *one Court* anywhere. No administrator, or claimant as distributee, in such cases, could bring about the supposed essentials of jurisdiction; if the property is scattered through several states, physically, neither administrator

nor distributee can bring it into any one state; and if the persons interested are resident in several states, there is no means or procedure known to the law, State or Federal, whereby they can all be brought *by personal service* before any Court whatsoever.

Such a proceeding is not one *in rem*, against the particular physically local property which may be in the hands of the administrator; and if it be regarded as *in the nature* of such a proceeding, the *res* is not any particular property located at any particular place, but the *estate* of the deceased, which embraces all the chattel interests owned by him at his death, and, if the administrator be the domiciliary one, it is all vested in him and in contemplation of law is located at the place of administration, the domicile. In *Overby v. Gordon*, 177 U. S., relied on by adversaries, at page 222, the Court, speaking of the Georgia County Court appointment of an administrator, after noting that the question of domicile was important only as establishing the particular Court of Ordinary which was vested with jurisdiction to appoint, added:

“The subject-matter or *res* upon which the power of the Court was to be exercised, was, therefore, the *estate* of the deceased.”

True, there the Court was acting upon a mere appointment of an administrator, and whether such administration was domiciliary or ancillary the appointment conferred no *authority* beyond the limits of the state; and hence its effect was strictly limited to the state.

The subject-matter of this suit is rather the *status* of the intestate at his death, than his estate. The effect on the *estate* of the determination of domicile is purely *consequential*. The judgment of the Court upon *the facts* determines the domicile, and, that once determined, the *law* declares the *consequences upon the property*.

Neither is it an action *in personam*, against the distributees. No recovery is sought or obtained against them. Indeed, their *relations to the deceased or the property* are not determined by the adjudication of his domicile. Such adjudication only affords a basis upon which the law declares the *classes of persons* to share, and the relative shares of such classes. Whether the persons made parties as possible distributees are within those classes or not, is unaffected by the *judgment on domicile*. It is an undue stressing of technicalities to say that the place of domicile of a deceased person cannot be authoritatively de-

terminated without the actual presence, by personal service or voluntary appearance, of every person who might, by the laws of some other state or states if he were domiciled there, be classed as his distributee. To so say, we repeat, is to say that domicile *can never be so determined* in very many cases.

It is well known that in every system of state statutes providing for bringing in by publication, warning order, and the like, persons on whom process cannot be personally served, liberal provision is made for opening the judgment or decree and making defense within periods running from two to seven years of its rendition. Both the Tennessee and Kentucky statutes contain such provisions (Shannon's Code, Secs. 6189-91; Bullitt's Ky. Code, 414-417) and similar provisions are to be found, we dare say, in the statutes of all the states. The determination of the domicile of a decedent would seem to be a subject peculiarly within the spirit and purpose of such statutes. The death of a person, it is reasonable to assume, will not long remain unknown to his relatives, nor is it unreasonable to infer some knowledge on their part respecting his property and its location, and the abodes of each other.

The proceedings for ascertaining his domicile, where it is a matter of dispute, must take place where some of these relatives reside and some of the decedent's property is situated; and they are not secret nor "done in a corner," but are taken openly and only after such means of communication to the public as experience has shown to be most reliable and effective—means universally recognized as adequate "notice" to absent persons in cases involving interests of millions in extent. Perhaps not in one such case in a hundred thousand can it go to a final judgment and the time pass for the correction of any injustice by a simple application to the Court, before every person interested will receive knowledge of it, and have opportunity to be heard.

As Judge Freeman has so well said, in the note we have quoted, many persons die leaving large and valuable property interests in different states, and these occurrences are constantly increasing; the questions thus arising are of great practical importance, personal representatives and Courts must deal with them, and (necessarily and very justly) state lines are becoming dimmer in such cases; the applicable law ought to be clearly defined, but unfortunately it is not, with respect to many of the questions growing out of such conditions. Undoubtedly it is not clearly defined on the crucial point in

the present case. Neither side is able to cite a direct or even closely analogous precedent. The conclusion must be reasoned out from fundamental principles and the necessities of our present system of government and social and industrial conditions.

We believe that the view we have presented, as the alternative of the startling results consequent upon the theory of the Court below, is sound and violative of no fundamental rule of property or procedure, that it is imperatively demanded by the conditions and tendencies of modern business in this country, and consequently that the judgment of the Court below should be *reversed*.

Respectfully,

E. W. ROSS,
PITTS & McCONNICO,
BERRY & GRASSHAM,
Attorneys.

BAKER, INDIVIDUALLY AND AS ADMINISTRA-
TRIX OF BAKER, *v.* BAKER, ECCLES & COM-
PANY ET AL.

ERROR TO THE COURT OF APPEALS OF THE STATE OF
KENTUCKY.

No. 115. Argued December 19, 1916.—Decided January 8, 1917.

The rule that the personal estate of an intestate has its *situs* at his domicile, and is subject to be administered and distributed according to the domiciliary laws, is merely a rule of the common law, which the States may adopt, modify or reject, as their policies dictate.

Each State has the power to control and administer the personal assets of an intestate found within her borders, such as debts due from a local corporation or the shares of its stock, to satisfy the rights of her own citizens in the distribution of such assets.

No State, therefore, has the power, by probate or other proceedings *in rem*, to fix the status as to administration, and determine the course of devolution, of personal property of an intestate situate beyond her borders and within the domain of another State.

Under the Fourteenth Amendment, the courts of one State are without power to determine by an action *in personam* the domicile of a decedent or the devolution of his personal assets situate in another State, as against persons, residents of the latter, who do not appear in the proceedings and are notified by publication only.

The full faith and credit clause of the Constitution and the act of Congress passed pursuant to it do not entitle a judgment *in personam*

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Opinion of the Court.

to extra-territorial effect, if it be shown that it was rendered without jurisdiction over the person sought to be bound.
162 Kentucky, 683, affirmed.

THE case is stated in the opinion.

Mr. John A. Pitts, with whom *Mr. E. W. Ross* was on the briefs, for plaintiff in error.

Mr. Charles K. Wheeler, with whom *Mr. Daniel Henry Hughes* and *Mr. James Guthrie Wheeler* were on the briefs, for defendants in error.

MR. JUSTICE PITNEY delivered the opinion of the court.

The federal question presented in this record is whether the Court of Appeals of Kentucky gave such faith and credit to certain judicial proceedings of the State of Tennessee as were required by Article IV, § 1, of the Constitution, and the act of Congress passed in pursuance thereof. Act of May 26, 1790, c. 11, 1 Stat. 122; Rev. Stats., § 905.

The facts are as follows: Charles Baker died in September, 1912, the owner of certain real and personal property in Hardin County, Tennessee, and of 270 shares of stock of Baker, Eccles & Company, a Kentucky corporation, of the par value of \$27,000, and a claim of several thousand dollars against that corporation for surplus profits. He left a widow, Josie C. Baker, now plaintiff in error, and a mother, Augusta H. Baker, one of the defendants in error. He appears to have left no children or descendants, nor any considerable indebtedness, and the personal estate, if distributable according to the laws of Tennessee, would go entirely to the widow; if distributable according to the laws of Kentucky, it would go one-half to the widow, the other half to the mother. The place of his domicile, admittedly determinative of the law of distribution, was in controversy.

Shortly after his death the widow applied to the County Court of Hardin County, Tennessee, for letters of administration. The proceedings were *ex parte*, and her application was granted, the order of the court appointing her administratrix reciting that at the time of his death the residence of Charles Baker was in that county. Afterwards, and in December, 1912, the widow presented to the same court a settlement of her accounts as administratrix, and an order was made reciting that it appeared from proof that Charles Baker died intestate, and at the time of his death was a resident of Hardin County, Tennessee, and that he left no children or descendants of such surviving, but left surviving his widow, the said Josie C. Baker, and under the laws of Tennessee she, as widow, was entitled to all of the surplus personal property; whereupon it was ordered that she as administratrix transfer and deliver to herself as the widow of the deceased all of the personal estate in her possession, including the stock in the Kentucky corporation, the certificates for which she held. Subsequently, and on December 28, 1912, the widow individually and as administratrix filed in the Chancery Court of Hardin County, Tennessee, her bill of complaint against Mrs. Augusta H. Baker, the mother, as a non-resident of Tennessee and a resident of the State of Kentucky, and also against several persons who were residents of Tennessee, setting up her appointment as administratrix, averring that her husband died intestate a resident of and domiciled in Tennessee, leaving his widow as his sole heir and distributee, and his mother and a brother his only heirs at law. The bill further set up the widow's ownership of the stock in Baker, Eccles & Company, and averred that the mother was asserting an interest in one-half of the personal estate left by the intestate, upon the theory that he died a resident of Kentucky and that under the laws of that State the mother was entitled to one-half of his surplus personal estate.

The prayer was (*inter alia*) that the mother be brought before the court in the manner provided for non-residents and be required to assert whatever claim she might have to the estate left by the deceased; and that it might be adjudged that Charles Baker died a resident of Tennessee, and that complainant as his widow was the sole distributee and entitled to all of his personal estate. Upon the filing of the bill an order of publication was made citing Augusta H. Baker as a non-resident to make defense upon a day named, and, she having failed to appear, the bill was taken for confessed against her, and eventually a decree was made "that the said Charles Baker at the time of his death was a citizen of and had his domicile at Savannah, Tennessee, and that the complainant as his widow is his sole distributee, and as such entitled to all of the personal estate of the said Charles Baker, after payment of such debts as were owed by him at the time of his death," and also that the title to the stock of Baker, Eccles & Company was in complainant, and that she was entitled to have a new certificate or certificates in her own name issued by the corporation in lieu of the certificates issued to said Charles Baker, and was entitled to receive from the corporation the amount of the accumulated profits and surplus and other amounts due from it to the decedent.

Meanwhile, the County Court of McCracken County, Kentucky, had granted letters of administration to Mrs. Augusta H. Baker, the mother, and she as such administratrix filed a petition in the McCracken Circuit Court for a settlement of the estate, making the widow and Baker, Eccles & Company defendants. The widow did not appear, and a judgment was rendered that Charles Baker died a resident of McCracken County, Kentucky, and that under the law of that State the mother and the widow were each entitled to one-half of the surplus of the personal estate. The corporation was directed to cancel the 270 shares of stock issued to decedent and reissue

one-half of these to the widow, the other half to the mother. This judgment has only historical importance, since the Kentucky Court of Appeals in the present case held it invalid as against the widow because of failure to comply with the local law respecting notice to her.

In June, 1913, the widow, individually and as administratrix of Charles Baker, began a suit in equity in the McCracken Circuit Court, which resulted in the judgment now under review. Baker, Eccles & Company was made defendant. The widow's petition, after setting up the orders and judgments of the Tennessee courts and alleging her sole ownership of the personal estate of the deceased by virtue thereof, prayed that the corporation be required to transfer to her individually the 270 shares of stock adjudged to her by the Tennessee chancery decree, and also prayed judgment for \$11,429.17, the alleged indebtedness due from the corporation to her husband at the time of his death. Baker, Eccles & Company filed an answer putting in issue all the averments of the petition. Mrs. Augusta H. Baker, the mother, came into the suit by an intervening petition, in which she averred that Charles Baker died a resident of the State of Kentucky, and that under the laws of that State she was entitled to one-half of the shares of stock and of the debt sued for, invoking the McCracken Circuit Court judgment as an adjudication to that effect. She further put in issue the validity of the orders and judgments in both the Tennessee courts, averring that so far as they determined that Charles Baker died a resident of that State and that his widow was entitled to the whole of his personalty after payment of his debts, they were void, because neither of the Tennessee courts had jurisdiction to make such orders or judgments. The pleadings having been made up, evidence was taken on the issue of fact as to the domicile of Charles Baker at the time of his death. Upon this evidence, the records of the judicial proceedings above mentioned, and a show-

ing of the pertinent Tennessee law, the case was submitted for hearing, and it was adjudged that the widow's petition be dismissed. The widow appealed to the Kentucky Court of Appeals, and that court, having determined the judgment of the McCracken Circuit Court in the mother's administration suit to be invalid as against the widow, held that the judgments of both Tennessee courts were invalid as against the mother because entered without process of law as against her; and then, passing upon the question of fact as to the domicile of Charles Baker, found upon the evidence that he was domiciled in the State of Kentucky and his personalty was distributable according to the laws of that State, and affirmed the judgment, with a modification directing the lower court to enter a judgment that Charles Baker died a resident of Kentucky, that his mother and his widow were each entitled to one-half of his personal estate situate in Kentucky at the time of his death after the payment of his debts, that Baker, Eccles & Company should cancel all certificates of stock issued to Charles Baker, and reissue one-half of these to the widow and the other half to the mother, and that the lower court embody in the judgment such other matters as would, after the payment of debts, distribute equally between the widow and the mother all other personal estate situate in Kentucky of which Charles Baker died possessed. 162 Kentucky, 683. To review this judgment upon the federal question, the widow brings the case here upon writ of error.

No question is made by defendants in error but that the Tennessee courts had general jurisdiction over the subject-matter, nor that the proceedings were in conformity with the Tennessee statutes respecting practice. The sole question is whether they were entitled under the Constitution of the United States and the act of Congress to recognition in the courts of Kentucky as adjudicating adversely the mother's asserted right to share as distributee in the

personal property situate in Kentucky, or as conclusively determining the fact of the domicile of the decedent as affecting that right, in view of the failure of the Tennessee courts to acquire jurisdiction over her person or over the corporation, Baker, Eccles & Company.

It is the fundamental contention of plaintiff in error that the personal estate of an intestate decedent is a legal unit, having its *situs* at the owner's domicile, that the title to the whole of it, wherever situate, is vested in the duly qualified domiciliary administrator, and not in the distributees, and that its distribution is governed by the law of the domicile of the deceased owner. *Wilkins v. Ellett*, 9 Wall. 740; 108 U. S. 256. Conceding that such is the general rule of law, it is so not because of any provision of the Federal Constitution, but only because the several States, or most of them, have adopted it from the common law into their respective systems. And the question remains, How is the fact of decedent's domicile to be judicially ascertained as a step in determining what law is to govern the distribution? Obviously, if fundamental principles of justice are to be observed, the ascertainment must be according to due process of law, that is, either by a proceeding *in rem* in a court having control of the estate, or by a proceeding *in personam* after service of process upon the parties to be affected by the judgment.

We have no concern with the effect of the Tennessee judgments upon the distribution of so much of decedent's personalty as was situate within that State. The present action affects only the ownership of shares of stock in a Kentucky corporation having no *situs* outside of its own State so far as appears, and a claim of indebtedness against the same corporation. For the purpose of founding administration, it is commonly held that simple contract debts are assets at the domicile of the debtor, even where a bill of exchange or promissory note has been given as evidence. *Wyman v. Halstead*, 109 U. S. 654, 656. The

State of the debtor's domicile may impose a succession tax. *Blackstone v. Miller*, 188 U. S. 189, 205. It is equally clear that the State which has created a corporation has such control over the transfer of its shares of stock that it may administer upon the shares of a deceased owner and tax the succession. See *Matter of Bronson*, 150 N. Y. 1, 9; *Matter of Fitch*, 160 N. Y. 87, 90; *Greves v. Shaw*, 173 Massachusetts, 205, 208; *Kingsbury v. Chapin*, 196 Massachusetts, 533, 535; *Dixon v. Russell*, 79 N. J. L. 490, 492; *Hopper v. Edwards*, 88 N. J. L. 471; *People v. Griffith*, 245 Illinois, 532. The rule generally adopted throughout the States is that an administrator appointed in one State has no power *virtute officii* over property in another. No State need allow property of a decedent to be taken without its borders until debts due to its own citizens have been satisfied; and there is nothing in the Constitution of the United States aside from the full faith and credit clause to prevent a State from giving a like protection to its own citizens or residents who are interested in the surplus after payments of debts. All of which goes to show, what plaintiff in error in effect acknowledged when she brought her present action in a Kentucky court, that the Tennessee judgments had no effect *in rem* upon the Kentucky assets now in controversy. She invokes the aid of those judgments as judgments *in personam*. But it is now too well settled to be open to further dispute that the "full faith and credit" clause and the act of Congress passed pursuant to it do not entitle a judgment *in personam* to extra-territorial effect if it be made to appear that it was rendered without jurisdiction over the person sought to be bound.

This rule became established long before the adoption of the Fourteenth Amendment, as the result of applying fundamental principles of justice and the rules of international law as they existed among the States at the inception of the Government. Notwithstanding that *Mills v.*

Duryee (1813), 7 Cranch, 481, 484,—where, as the opinion shows, the defendant had full notice of the suit, was arrested, and gave bail,—was by some courts interpreted as holding that irrespective of such notice the act of Congress required a judgment under all circumstances to receive the same faith and credit in every other State as it had in the State of its origin (*Field v. Gibbs* [1815], Pet. C. C. 155, 158; Fed. Cas. No. 4766, 9 Fed. Cas. 15, 16; *Commonwealth v. Green* [1822], 17 Massachusetts, 515, 546), the view soon came to prevail in the state courts that the case was not authority for so broad a proposition, and that whenever a judgment of a state court was produced as evidence, the jurisdiction of the court rendering it was open to inquiry, and if it appeared that the court had no jurisdiction the judgment was entitled to no faith or credit.¹

Mr. Justice Story, who wrote the opinion in *Mills v. Duryee*, in his treatise on the Conflict of the Laws, published in 1834 (§ 609), declared that the “full faith and credit” clause and the act of Congress did not prevent an inquiry into the jurisdiction of the court to pronounce the judgment, and this view was adopted and made the basis of decision by this court in *D’Arcy v. Ketchum* (1850), 11 How. 165, which was followed by *Thompson v. Whitman*, 18 Wall. 457, 459, with a review of many cases.

During the same period, however, it occasionally was

¹ *Borden v. Fitch* (1818), 15 Johns. (N. Y.) 121, 143, 144; *Aldrich v. Kinney* (1822), 4 Conn. 380, 383; *Hall v. Williams* (1828), 6 Pick. (Mass.) 232, 242–245; *Miller v. Miller* (1829), 1 Bail. (S. C.) 242, 248; *Hall v. Williams* (1833), 10 Me. (1 Fairf.) 278, 287; *Wernwag v. Pauling* (1833), 5 Gill & Johns. (Md.) 500, 507. See also *Phelps v. Holker* (1788), 1 Dall. 261, 264; *Curtis v. Martin* (1805), 2 N. J. L. (Pen.) 399, 405, 406; *Rogers v. Coleman* (1808), 3 Ky. (Hard.) 413, 415; *Kilburn v. Woodworth* (1809), 5 Johns. 37, 41; *Fenton v. Garlick* (1811), 8 Johns. 194, 197; *Shumway v. Stillman* (1825, 1831), 4 Cow. 292, 294; 6 Wend. 447, 449, 453; *Starbuck v. Murray* (1830), 5 Wend. 148, 156; *Bissell v. Briggs* (1813), 9 Mass. 462, 468; *Whittier v. Wendell* (1834), 7 N. H. 257.

intimated, if not held, by some of the state courts, that a personal judgment effective within the territory of the State could be rendered against a non-resident defendant who did not appear and submit himself to the jurisdiction, provided notice of the suit had been served upon him in the State of his residence, or had been published in the State within which the court was situate, pursuant to the provisions of a local statute. See *Smith v. Colloty*, 69 N. J. L. 365, 371. As was said by Mr. Justice Field, speaking for this court in *Pennoyer v. Neff*, 95 U. S. 714, 732, it is difficult to see how such a judgment could legitimately have force even within the State. But until the adoption of the Fourteenth Amendment (1868) this remained a question of state law; the effect of the "due process" clause of that Amendment being, as was held in the case just mentioned, to establish it as the law for all the States that a judgment rendered against a non-resident who had neither been served with process nor appeared in the suit was devoid of validity within as well as without the territory of the State whose court had rendered it, and to make the assertion of its invalidity a matter of federal right.

The fundamental requisite of due process of law in judicial proceedings is the opportunity to be heard. *Louisville & Nashville R. R. Co. v. Schmidt*, 177 U. S. 230, 236; *Simon v. Craft*, 182 U. S. 427, 436; *Grannis v. Ordean*, 234 U. S. 385, 394. To hold one bound by the judgment who has not had such opportunity is contrary to the first principles of justice. And to assume that a party resident beyond the confines of a State is required to come within its borders and submit his personal controversy to its tribunals upon receiving notice of the suit at the place of his residence is a futile attempt to extend the authority and control of a State beyond its own territory.

So far as the case for plaintiff in error depends upon the adjudication of domicile by the County Court of Hardin County, Tennessee, for the mere purpose of appointing

an administratrix, it is controlled by *Thormann v. Frame*, 176 U. S. 350, and *Overby v. Gordon*, 177 U. S. 214, 227. But, it is pointed out, in this case the county court went beyond the bare appointment of an administratrix, and proceeded to a settlement and distribution of the estate. Moreover, plaintiff in error relies not merely upon this judgment, but upon the decree in the chancery court of the same county, which in form specifically determined her exclusive right to the Kentucky personalty. It results, however, from what we have already said that this right could not be conclusively established by any Tennessee court as against a resident of Kentucky who was not served with process and did not appear therein, and that the Kentucky courts did not go counter to the Federal Constitution and the act of Congress in refusing to give faith and credit to the Tennessee judgments.

In many forms, and with much emphasis, the plaintiff in error presses the argument *ab inconvenienti*. Starting from the proposition that the entire personalty of an intestate decedent wherever in fact located is a unit, having its legal *situs* at the owner's domicile, and that its distribution ought to be in accordance with the law of that domicile, it is argued: How is it possible to judicially determine that domicile under the theory of the Kentucky Court of Appeals in the case of an intestate entitled to personalty in several States having different laws of distribution, and with parties claiming to be distributees residing in different jurisdictions? Assuming a lawful grant of administration in each State wherein part of the personalty is located and some of the possible distributees reside, how, it is asked, is any one of these administrators, or any one of the claimants of a share in the whole estate, to have the place of the intestate's domicile settled authoritatively and the lawful distributees ascertained? The answer is clear: Unless all possible distributees can be brought within the jurisdiction of a single court having authority

to pass upon the subject-matter, either by service of process or by their voluntary appearance, it must in many cases be impossible to have a single controlling decision upon the question. In some cases, the ideal distribution of the entire personal estate as a unit may thus be interfered with; but whatever inconvenience may result is a necessary incident of the operation of the fundamental rule that a court of justice may not determine the personal rights of parties without giving them an opportunity to be heard.

Judgment affirmed.